Vol. 43—No. 65
4-4-78
PAGES
13999-14301

federal register

TUESDAY, APRIL 4, 1978

highlights

MIAMI, FLORIDA WORKSHOP

HOW TO USE THE FEDERAL REGISTER

WHO: Presented by the Office of the Federal Register with the cooperation of Florida International University.

FOR: Any person who must use the Federal Register and Code of Federal Regulations.

WHAT: Free public workshop (approximately 3 hours) to present:

1. Brief history of the Federal Register system.
2. Difference between legislation and regulations.
3. Relationship of Federal Register and the Code of Federal Regulations.
4. Important Register document.
5. An introduction to the finding aids of the FR/CFR system.

WHEN: April 18, 1978 at 9 a.m.

WHERE: Florida International University, South Campus, Student Union Building, Room U.H. 210.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them, as part of the General Services Administration's efforts to encourage public participation in government actions. There will be no discussion of specific agency regulations.

INFORMATION: Ms. Loudres Sansouci, Area Code 305-552-2277.

CONTINUED INSIDE

AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR notice 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/COAST GUARD	USDA/ASCS		DOT/COAST GUARD	USDA/ASCS
DOT/NHTSA	USDA/APHIS		DOT/NHTSA	USDA/APHIS
DOT/FAA	USDA/FNS		DOT/FAA	USDA/FNS
DOT/OHMO	USDA/FSQS		DOT/OHMO	USDA/FSQS
DOT/OPSO	USDA/REA		DOT/OPSO	USDA/REA
	CSC			CSC
	LABOR			LABOR
	HEW/ADAMHA			HEW/ADAMHA
	HEW/CDC			HEW/CDC
	HEW/FDA			HEW/FDA
	HEW/HRA			HEW/HRA
	HEW/HSA			HEW/HSA
	HEW/NIH			HEW/NIH
	HEW/PHS			HEW/PHS

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

ATTENTION: For questions, corrections, or requests for information please see the list of telephone numbers appearing on opposite page.

federal register

Area Code 202 Phone 523-5240

Published daily, Monday through Friday (no publication on Saturdays, Sundays, or on official Federal holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C., Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

The FEDERAL REGISTER provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive orders and Federal agency documents having general applicability and legal effect, documents required to be published by Act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The FEDERAL REGISTER will be furnished by mail to subscribers, free of postage, for $5.00 per month or $50 per year, payable in advance. The charge for individual copies is 75 cents for each issue, or 75 cents for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

There are no restrictions on the republication of material appearing in the FEDERAL REGISTER.

INFORMATION AND ASSISTANCE

Questions and requests for specific information may be directed to the following numbers. General inquiries may be made by dialing **202–523–5240.**

HIGHLIGHTS—Continued

reminders

(The items in this list were editorially compiled as an aid to FEDERAL REGISTER users. Inclusion or exclusion from this list has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.)

Rules Going Into Effect Today

NOTE: There were no items eligible for inclusion in the list of RULES GOING INTO EFFECT TODAY.

List of Public Laws

NOTE: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's LIST OF PUBLIC LAWS.

contents

list of cfr parts affected in this issue

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, follows beginning with the second issue of the month.

A Cumulative List of CFR Sections Affected is published separately at the end of each month. The guide lists the parts and sections affected by documents published since the revision date of each title.

3 CFR

MEMORANDUMS:
March 21, 1978 13999

5 CFR

213 (2 documents) 14001
315 14001

7 CFR

1 14002
2 14004
102 14005
1948 14282

PROPOSED RULES:
729 14025
989 14024
1068 14025
1446 14035

9 CFR

75 14022

PROPOSED RULES:
92 14042
113 14042
381 14043

10 CFR

Ch. I 14007

13 CFR

108 14007

14 CFR

1204 14008

PROPOSED RULES:
304 14044

16 CFR

PROPOSED RULES:
13 14053

19 CFR

PROPOSED RULES:
4 14060

21 CFR

182 14008
184 14008
540 14008
561 14008

PROPOSED RULES:
182 14064
184 14064
186 14064

22 CFR

Ch. V 14298

28 CFR

0 14009

29 CFR

1902 14009
2520 14009
2605 14010
2608 14010

PROPOSED RULES:
575 14068
1910 14071

33 CFR

222 14013
279 14014

38 CFR

3 14016

39 CFR

111 14018

40 CFR

180 (2 documents) 14019, 14020

PROPOSED RULES:
56 14072

41 CFR

Ch. I 14021

42 CFR

54a 14276

45 CFR

64 14072
116c 14292

PROPOSED RULES:
1201 14072
1231 14077

47 CFR

PROPOSED RULES:
63 14080
64 (2 documents) 14080, 14088
73 14088

49 CFR

1 14021
1033 14021

50 CFR

33 14022

CUMULATIVE LIST OF CFR PARTS AFFECTED DURING APRIL

The following numerical guide is a list of parts of each title of the Code of Federal Regulations affected by documents published to date during April.

1 CFR

Ch. I 13865

3 CFR

MEMORANDUMS:
March 21, 1978 13999

5 CFR

213 14001
315 14001

7 CFR

1 14002
2 14004
102 14005
1948 14282

PROPOSED RULES:
729 14025
989 14024
1068 14025
1446 14035

9 CFR

75 14022

PROPOSED RULES:
92 14042
113 14042
381 14043

10 CFR

Ch. I 14007
430 13865

PROPOSED RULES:
430 13888

12 CFR

PROPOSED RULES:
9 13889

13 CFR

108 14007

14 CFR

39 ..... 13866, 13868
71 13869
1204 14008

PROPOSED RULES:
39 13890
71 13891
121 13891
129 13891
207 13892
208 13892
212 13892

14 CFR—Continued

PROPOSED RULES—Continued
214 13892
298 13892
304 14044
371 13892
372a 13892
373 13892
378 13892
378a 13892

16 CFR

PROPOSED RULES:
13 14053

19 CFR

PROPOSED RULES:
4 14060

21 CFR

182 14008
184 14008
540 14008
561 14008

PROPOSED RULES:
182 14064
184 14064
186 14064

22 CFR

Ch. V 14298

24 CFR

203 13870
207 13870
220 13870
841 13871

26 CFR

1 13875

PROPOSED RULES:
1 13893
601 ..... 13896, 13899

28 CFR

0 14009

29 CFR

1902 14009
2520 14009
2605 14010
2608 14010

PROPOSED RULES:
575 14068
1910 14071

32 CFR

706 13878
707 13878

33 CFR

222 14013
279 14014
305 13990

38 CFR

3 14016

39 CFR

111 14018

40 CFR

52 13879
180 ..... 14019, 14020

PROPOSED RULES:
52 13899–13902
56 14072

41 CFR

Ch. I 14021

42 CFR

54a 14276
462 13970

45 CFR

116c 14292

PROPOSED RULES:
1201 14072
1231 14077

47 CFR

95 ..... 13976, 13976

PROPOSED RULES:
63 14080
64 ..... 14080, 14088
67 13902
73 14088

49 CFR

1 14021
192 13880
1033 14021

PROPOSED RULES:
Ch. V 13905

50 CFR

33 14022
230 13883

PROPOSED RULES:
227 13906

FEDERAL REGISTER PAGES AND DATES—APRIL

Pages	*Date*
13865–13998	Apr. 3
13999–14301	4

presidential documents

[3195-01]

Title 3—The President

Memorandum of March 21, 1978

Presidential Determination Under Section 4 of the Arms Export Control Act—Indonesia

[Presidential Determination No. 78-7]

Memorandum for the Secretary of State

THE WHITE HOUSE,
Washington, March 21, 1978.

Pursuant to the authority vested in me by Section 4 of the Arms Export Control Act, as amended, I hereby determine that the financing under the Arms Export Control Act of the sale of F-5E and F-5F aircraft, and associated equipment, to Indonesia is important to the national security of the United States.

You are requested on my behalf to report this determination to the Congress, as required by law.

This determination shall be published in the FEDERAL REGISTER.

Jimmy Carter

[FR Doc. 78-9022 Filed 3-31-78; 4:18 pm]

rules and regulations

[6325-01]

Title 5—Administrative Personnel

CHAPTER I—CIVIL SERVICE COMMISSION

PART 213—EXCEPTED SERVICE

Department of Health, Education, and Welfare; National Credit Union Administration; Department of Housing and Urban Development

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This amendment excepts under Schedule C certain positions at the Department of Health, Education, and Welfare, and National Credit Union Administration because they are confidential in nature. This amendment also reestablishes a position at the Department of Housing and Urban Development because it is confidential in nature.

EFFECTIVE DATE: Department of Health, Education, and Welfare and National Credit Union Administration, March 22, 1978. Department of Housing and Urban Development, March 21, 1978.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202-632-4533.

Accordingly, 5 CFR 213.3316(a)(8), and 213.3357(f) are added and 213.3384(d)(3) is amended to read as follows:

§ 213.3316 Department of Health, Education, and Welfare.

(a) *Office of the Secretary.* * * *

(8) One Confidential Secretary to the Secretary.

* * * * *

§ 213.3357 National Credit Union Administration.

* * * * *

(f) One Secretary (Steno) to the Public Information Officer.

* * * * *

§ 213.3384 Department of Housing and Urban Development.

* * * * *

(d) *Office of Assistant Secretary for Community Planning and Development.* * * *

(3) Four Special Assistants to the Assistant Secretary.

(U.S.C. 3301, 3302; EO 10577, 3 CFR 1954-1958 Comp., p. 218.)

For the United States Civil Service Commission.

JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc. 78-8809 Filed 4-3-78; 8:45 am]

[6325-01]

PART 213—EXCEPTED SERVICE

Executive Office of the President; Department of Health, Education and Welfare; Department of Energy; ACTION

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This amendment excepts under Schedule C certain positions at the Executive Office of the President; Department of Health, Education, and Welfare; Department of Energy; and ACTION because they are confidential in nature.

EFFECTIVE DATE: March 23, 1978.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202-632-4533.

Accordingly, 5 CFR 213.3303(h), 213.3316(n)(8), 213.3331(m)(6), and 213.3359(n) are added as set out below:

§ 213.3303 Executive Office of the President.

* * * * *

(h) *Office of Administration.*

(1) One Special Assistant to the Director.

* * * * *

§ 213.3316 Department of Health, Education, and Welfare.

* * * * *

(n) *Office of the Assistant Secretary for Human Development.* * * *

(8) One Confidential Assistant to the Commissioner, Administration on Aging.

* * * * *

§ 213.3331 Department of Energy.

* * * * *

(m) *Office of the Assistant Secretary for Intergovernmental and Institutional Relations.* * * *

(6) One Staff Assistant, Congressional Affairs.

§ 213.3359 ACTION.

* * * * *

(n) One Director of Communications.

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954-1958 Comp., p. 218.)

For the United States Civil Service Commission.

JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc. 78-8810 Filed 4-3-78; 8:45 am]

[6325-01]

PART 315—CAREER AND CAREER-CONDITIONAL EMPLOYMENT

Department of Energy

AGENCY: Civil Service Commission.

ACTION: Final regulation.

SUMMARY: This rule permits the noncompetitive conversion to career-conditional employment of certain nonpermanent employees of the Department of Energy. This action is necessary because the employees in question were inadvertently excluded from the provisions of the Department of Energy Organization Act which allowed the noncompetitive conversion of similarly situated employees in energy research centers.

EFFECTIVE DATE: April 4, 1978.

FOR FURTHER INFORMATION CONTACT:

Raleigh M. Neville, 202-632-6817.

Accordingly, 5 CFR 315.703c is added as set out below:

§ 315.703c Certain nonpermanent employees of the Department of Energy.

(a) *General.* Employees transferred to the Department of Energy under Pub. L. 95-91, who are serving in nonpermanent appointments made under competitive procedures of the former Atomic Energy Commission or Energy Research and Development Administration and are determined by the Department to be performing continuing functions, may be converted to career or career-conditional by the Commission upon recommendation by the Department.

(b) *Tenure upon conversion.* Employees converted under this section become career-conditional employees unless they have completed the service requirement for career tenure.

(c) *Acquisition of competitive status.* A person whose employment is converted to career or career-conditional employment under this section acquires competitive status automatically.

(5 U.S.C. 1302, 3301, 3302; E.O. 10577, 3 CFR 1954-1958 Comp., p. 218.)

For the United States Civil Service Commission.

JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc. 78-8833 Filed 4-3-78; 8:45 am]

[3410-01]

Title 7—Agriculture

SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE

PART 1—ADMINISTRATIVE REGULATIONS

Subpart A—Official Records

FEE SCHEDULE

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: The amended U.S. Department of Agriculture fee schedule is published in its entirety. The amended fee schedule increases the fees USDA agencies may charge for responding to Freedom of Information Act and Privacy Act requests. The increased fees are necessary to offset increased costs. The amended schedule also contains minor administrative changes.

EFFECTIVE DATE: April 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Anthony E. Cooch, Procurement Division, Office of Operations and Finance, USDA, Washington, D.C. 20250, phone, 202-447-7527.

SUPPLEMENTARY INFORMATION: On Friday, February 24, 1978, the Department of Agriculture published a notice of proposed rulemaking in the FEDERAL REGISTER (43 FR 7649) setting forth a proposed amendment of the Department of Agriculture fee schedule. Interested persons were given until March 27, 1978, to submit comments concerning the proposed amendment. No comments were received. While the notice of proposed rulemaking proposed amending specified sections of the fee schedule, it has been determined to publish the fee schedule in its entirety for the benefit of the public. The only changes made to the fee schedule are those which were proposed in the notice of proposed rulemaking. Accordingly, Appendix A to 7 CFR, Subtitle A, Part 1, Subpart A is revised to read as follows:

FEE SCHEDULE

Sec. 1. *General.* This schedule sets forth fees to be charged for providing copies of records, including photographic reproductions, microfilm, maps and mosaics, and related services. The fees set forth in this schedule are applicable to all agencies and consitituent units of the Department of Agriculture.

Sec. 2. *Facilities.* Records and related services are available at the locations specified by the agencies in their statements of procedures to facilitate public inspection and copying of its records. Any material offered for sale by the Government Printing Office should be purchased from that source. Departmental agencies will not stock such material for public sale.

Agencies do not stock copies of forms and publications or maintain records at any facility which does not require these materials in its operations.

Sec. 3. *Fees for materials and services.* All agencies of the Department shall be guided by the fees set forth herein. Any changes or additions to this fee schedule shall be made by amendment to or revision of this schedule.

Sec. 4. *Circumstances governing exceptions to the charging of fees for records and related services.* (For photographic reproductions, see Sec. 12.)

a. *Waiver of fees for records and related services.* Fees may be waived in whole or in part under the following conditions:

(1) Where individual collections are $3.00 or less.

(2) Where the furnishing of the service without charge is an appropriate courtesy to a foreign country or international organization; or comparable fees are set on a reciprocal basis with a foreign country or an international organization.

(3) Where the recipient is engaged in a nonprofit activity designed for the public safety, health, or welfare.

(4) Where the agency determines that payment of the full fee by a State, local government, or nonprofit group would not be in the interest of the program involved.

b. *Fees not to be charged for records and related services.* Documents shall be furnished without charge or at a reduce charge under the following conditions:

(1) When the furnishing of records and related services is determined by the agency to be in the public interest as primarily benefiting the general public.

(2) When filling requests from other Departments or Government agencies for official use, provided quantities requested are reasonable in number.

(3) When members of the public provide their own copying equipment, in which case no copying fee will be charged.

(4) When any notices, decisions, orders, or other material are required by law to be served on a party in any proceedings or matter before any Department agency.

c. Where both a and b above apply to a matter, b shall be controlling.

Sec. 5. *Limitations of copies.* a. Agencies may restrict numbers of photocopies and directives furnished the public to one copy of each page. Copies of forms provided the public shall also be held to the minimum practical. Persons requiring any large quantities should be encouraged to take single copies to commercial sources for further appropriate reproduction.

b. Single or multiple copies of transcripts, provided the Department under a reporting service contract, may be obtained from the contractor at a cost not to exceed the cost per page charged to the Department for extra copies. The contractor may add a postage charge when mailing orders to the public but no other charge may be added.

Sec. 6. *Search services.* a. Search services are services of agency personnel—clerical, supervisory or professional salary level—used in trying to find the records sought by the requester. They include time spent examining records for the purpose of finding records which are within the scope of the request. They also include services to transport personnel to places of record storage, or records to the location of personnel for the purpose of the search, if such services are reasonably necessary.

b. Because of the nature of the Department's business and records, the normal location of a record in a file or other facility will not be considered a search. This would be the same as quickly locating a piece of material for purposes of answering a letter or telephone inquiry, and is based on the Department's obligation to respond to requests furnishing a reasonably specific description of the record.

Sec. 7. *Payments of fees and charges.* a. Payments will be collected to the fullest extent possible in advance or at the time the requested materials are furnished.

b. Except as otherwise stipulated by agency procedures, payment shall be made by check, draft, or money order made payable to the Treasury of the United States, but small amounts may be paid in cash, particularly where services are performed in response to a visit to a Department office.

c. Where the estimated fees to be charged exceed $50.00, a deposit of 50 percent of the estimated amount shall be collected from the requester before any of the requested materials are reproduced.

d. Where a request for records indicates the necessity of an extensive search, the requester should be notified of that fact and of the possibility of an unproductive search. The notification should offer the requester the opportunity to confer with agency personnel to reform the request to meet the needs at a lower fee. When an extensive search still appears necessary, unless the agency determines that the request is in the public interest in accordance with Section 4b (1), it shall inform the requester that no search will be undertaken until an agreement to pay applicable fees is received, including a deposit of 50 percent of the estimated fee where appropriate.

Sec. 8. *Fees for records and related services.* a. Photocopies 8½" x 14" or smaller: $0.10 for the first copy and $0.05 for each additional copy of the same page.

b. Photocopies in excess of 8½" x 14": $0.25 per linear foot of the longest side of the copy.

c. Manual searches will be charged for at the rate of $5.50 per hour for clerical time and $11.00 per hour for supervisory or professional time. Charges will be computed to the nearest quarter hour required for the search. A search may involve both clerical and supervisory or professional time.

d. Other direct costs incurred will be assessed the requester at the actual cost to the Government, e.g., where records are required to be shipped from one office to another by commercial carrier in order to timely answer the request, the actual freight charges will be assessed the requester.

e. Computer services will be charged for at the rates established in the Users Manual or Handbook published by the computer center at which the work will be performed, except that where commercial time-sharing computer sources are the required search media, the contract rate charged by the commercial source to the Government will be charged. A listing follows showing where those rates are published and the office from which copies may be obtained or at which the rates may be examined.

Fort Collins Computer Center Users Manual: Fort Collins Computer Center, U.S. Department of Agriculture, 3825 East Mulberry Street (P.O. Box 1206), Fort Collins, Colo. 80521.

New Orleans Computer Center Users Manual: New Orleans Computer Center, U.S. Department of Agriculture, 13800 Old Gentilly Road, Building 350, New Orleans, La. 70129.

Kansas City Computer Center Users Manual: Kansas City Computer Center, U.S. Department of Agriculture, 8930 Ward Parkway (P.O. Box 205), Kansas City, Mo. 64141.

Washington Computer Center Users Handbook: Washington Computer Center, U.S. Department of Agriculture, Room S-100, South Building, 12th Street and Independence Avenue SW., Washington, D.C. 20250.

St. Louis Computer Center. Charges for the St. Louis Computer Center will be based on actual expenses incurred in performing the search. Address is: St. Louis Computer Center, U.S. Department of Agriculture, 1520 Market Street, St. Louis, Mo. 63103.

f. The fees do not include and no charge shall be made for (a) time spent examining records to determine whether an exemption can and should be asserted, (b) time spent deleting exempt matter being withheld from records to be furnished, or (c) time spent in monitoring a requester's inspection of agency records.

g. Certifications, $1.00 each; Authentications under Department Seal (including aerial photographs), $2.00 each.

h. Except as provided in section 9, for services not subject to the Freedom of Information Act and not covered by (g) above, agencies may set their own fees in accordance with applicable law.

i. The fees specified in a through f of this Section apply to all requests for services under the Freedom of Information Act, as amended (5 U.S.C. 552), unless no fee is to be charged, or the agency has determined to waive or reduce those fees pursuant to Section 4. No higher fees nor charges in addition to those provided for in this schedule may be charged a party requesting search or duplication services under the Freedom of Information Act.

j. The fees specified in g and h of this Section and in Sections 9 through 16 of this schedule apply to requests for services other than those subject to the Freedom of Information Act. The authority for establishment of these fees is at 31 U.S.C. 483a and other applicable law.

Sec. 9. *Photographic reproduction, microfilm, mosaic and maps.* Reproduction of such aerial or other photographic microfilm, mosaic and maps as have been obtained in connection with the authorized work of the Department may be sold at the estimated cost of furnishing such reproductions as prescribed in this schedule.

Sec. 10. *Agencies which furnish photographic reproductions. a. Aerial photographic reproductions.* The following agencies of the Department furnish aerial photographic reproductions:

Agricultural Stabilization and Conservation Service (ASCS), APFO, USDA-ASCS, 2222 West 2300 South, P.O. Box 30010, Salt Lake City, Utah 84125.

Soil Conservation Service (SCS), USDA, Cartographic Division, Washington, D.C. 20250, or Cartographic Facility in nearest SCS Technical Service Center.

b. *Other photographic reproductions.* Other types of photographic reproductions may be obtained from the following agencies of the Department:

Agricultural Stabilization and Conservation Service (ASCS) (Address above).

Forest Service (FS), USDA, P.O. Box 2417, Washington, D.C. 20013, or nearest Forest Service Regional Office.

Office of Governmental and Public Affairs, USDA, Photographic Division, Room 530A, Washington, D.C. 20250.

Soil Conservation Service, USDA, Information Division, Audio Visual Branch, Washington, D.C. 20250.

Science and Education Administration, USDA, Office of the Deputy Director, Technical Information Systems, Room 200, NAL Building, Beltsville, Md. 20705.

Sec. 11. *Photographic Sales Committee.* The Photographic Sales Committee consists of representatives designated by Department agencies principally concerned with the sale of photographic reproductions. The Committee recommends prices at which photographic and mosaic reproductions, except library material, shall be sold, and other matters related to photographic reproductions.

Sec. 12. *Circumstances under which photographic reproductions may be provided free.* Reproductions may be furnished free at the discretion of the agency, if it determines this action to be in the public interest, to:

a. Press, radio, television, and newsreel representatives for dissemination to the general public.

b. Agencies of State and local governments carrying on a function related to that of the Department when it will help to accomplish an objective of the Department.

c. Cooperators and others furthering agricultural programs. Generally, only one print of each photograph should be provided free.

Sec. 13. *Loans.* Aerial photographic film negatives or reproductions may not be loaned outside the Federal Government.

Sec. 14. *Sales of positive prints under Government contracts.* The annual contract for furnishing single and double frame slide film negatives and positive prints to agencies of the Department, County Extension Agents, and others cooperating with the Department, carries a stipulation that the successful bidder must agree to furnish slide film positive prints to such persons, organizations, and associations as may be authorized by the Department to purchase them.

Sec. 15. *Procedure for handling orders.* In order to expedite handling, all orders should contain adequate identifying information. Agencies furnishing aerial photographic reproductions require that all such orders identify the photographs. Each agency has its own procedure and order forms.

Sec. 16. *Photographic reproduction prices.* The prices for photographic reproductions listed here are the most generally requested items.

a. *Science and Education Administration for Technical Information Systems.* The following prices are applicable to Technical Information Systems items only: Microfilm—$1.00 for each 30 pages or fraction thereof. Photoreproduction—$2.00 for each 10 pages or fraction thereof. Magnetic tape containing bibliographic files—$45.00 per reel.

b. *General photographic reproductions.* Minimum charge $1 per order. All sizes are approximate. An extra charge may be necessary for excessive laboratory time caused by any special instructions from the purchaser.

Class of work and unit	Price
1. Black and white copy negatives and film positives:	
4 by 5 (each)	$4.20
5 by 7 (each)	4.50
8 by 10 (each)	5.40
11 by 14 (each)	8.40
2. Black and white enlargements:	
Up to 8 by 10 (each)	3.30
11 by 14 (each)	4.80
Over 11 by 14 (per square foot)	4.20
3. Reductions (from any size negative)	4.20
4. Slides: Black and white (from copy negative):	
2 by 2 cardboard mounted (each)	3.00
3¼ by 3¼ (each)	4.20
Original color (from flat copy) (each)	2.25
Duplicate color (2 by 2 cardboard mounted) (each)	.35
(Duplicate color slides are slides copied from 35mm color slides only.) Slides made from black and white material, or from transparencies larger or smaller than 35mm, will be charged at the same rates shown for black and white and original color slides	
5. Color transparencies (4 by 5) (each)	9.00
6. Color prints	(1)
7. Current USDA slide sets in stock:	
1 to 50 frames	14.50
51 to 60 frames	16.50
61 to 75 frames	18.50
76 to 95 frames	21.50
96 to 105 frames	23.00
106 to 130 frames	26.50
(Prices include printed narrative guide.)	
The following can be purchased for the corresponding slide sets above: Cassettes	3.00
8. Milk sedimentation standards (5 by 7 black and white photograph) (each)	1.25
9. Seeds and seedlings (any size) (each)	2.40

[1] By quotation.

c. *Aerial photographic reproductions: black and white.* No minimum charge on aerial photography orders.

1. *Contact prints.* The prices for contact prints are set forth below. The size refers to the approximate size of the contact print.

Size:	Price each
10 by 10 in on RC (resin coated base paper)	$2.00
10 by 10 in on white opaque print film	3.00

2. *Diapositives.*

Size:	Price each
10 by 10 in film positive	$3.00
10 by 10 in glass plates 0.06 in thickness	20.00

3. *Copy negatives.*

Size:	Price each
10 by 10 in (direct duplicating film) one-step method	3.00
10 by 10 in two-step method	6.00

4. *Aerial Photo Index Sheets.*

Size:	Price each
20 by 24 in on RC (resin coated base) paper	5.00
20 by 24 in film positive	15.00

5. *Enlargements (projection prints).* The price for enlargements of various sizes are set forth below. The size in each case refers to the approximate paper size required to produce the enlargement ordered.

	Price each	
	RC (resin coated base) paper	Film positive transparency
Size:		
12 by 12 in	$5.00	$7.00
17 by 17 in	6.00	8.00
24 by 24 in	7.00	10.00
38 by 38 in	15.00	17.00

6. *Aperture Cards (Photo Indexes).*

Duplicate of an aperture card—price each—$0.25.

7. *Color Aerial Photography.* Furnished only by the Agricultural Stabilization and Conservation Service, Aerial Photography Field Office in Salt Lake City, Utah.

Reproductions made from color negatives. Size is approximate size of print:

	Price each	
	RC (resin coated base) color paper	Color film positive transparency
Size:		
10 by 10 in contact print	$5.50	$12.00
12 by 12 in enlargement	15.00	.....
17 by 17 in enlargement	20.00	.....
24 by 24 in enlargement	25.00	.....
38 by 38 in enlargement	40.00	.....

Reproductions made from color positive transparencies (natural color or color infrared):

	Price each	
	White opaque base color print film	Color film positive transparency
Size:		
10 by 10 in	$7.00	$12.00
12 by 12 in	15.00	20.00
17 by 17 in	25.00	30.00
24 by 24 in	30.00	35.00
38 by 38 in	45.00	50.00

8. *Landsat/Skylab imagery.* Furnished only by the Agricultural Stabilization and Conservation Service, Aerial Photography Field Office in Salt Lake City, Utah.

	Price each	
	Black and white	Color
Size:		
70 mm transparency	$4.00	$5.00
10 by 10 in RC paper print	4.00	9.00
10 by 10 in film positive	5.00	12.00
12 by 12 in RC paper print enlargement	10.00	15.00
17 by 17 in RC paper print enlargement	12.00	20.00
24 by 24 in RC paper print enlargement	20.00	25.00
38 by 38 in RC paper print enlargement	25.00	40.00
10 by 10 color composite negative	.....	20.00
10 by 10 color internegative.	.....	16.00

9. *Special Need.* For special needs not covered above, persons desiring aerial photographic reproductions should contact the agencies listed in section 10a or the Department Aerial Photography Coordinator, Aerial Photography Field Office, USDA-ASCS, 2222 West 2300 South, P.O. Box 30010, Salt Lake City, Utah 84125.

Sec. 17. *Sound recordings.*

Reel to reel cassette:	
7½ min	$6.20
15 min	7.25
22½ min	8.30
30 min	9.20
37½ min	10.50
45 min	11.30
52½ min	12.50
60 min	13.20

5. U.S.C. 301; 5 U.S.C. 552; 31 U.S.C. 483a; and 7 CFR 2.75(a)(3)(ii).)

Done at Washington, D.C., this 30th day of March 1978.

E. ALVAREZ,
Acting Associate Director,
Office of Operations and Finance.

[FR Doc. 78-8817 Filed 4-3-78; 8:45 am]

[3410-34]

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

Revisions of Delegations of Authority

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: This document revises the delegations of authority from the Secretary and general officers. Pursuant to the Agricultural Marketing Act of 1946, as amended, in order to facilitate the marketing, distribution, processing, and utilization of swine and products thereof, the Department is developing a new program to investigate and develop solutions to the problems resulting from the use of sulfonamides in swine. The Assistant Secretary for Marketing Services and the Administrator of the Animal and Plant Health Inspection Service will be given responsibility for the overall administration of this program, and the delegations are being amended to reflect these new responsibilities.

EFFECTIVE DATE: April 4, 1978.

FOR FURTHER INFORMATION CONTACT:

Dr. Robert I. Brown, Assistant to the Deputy Administrator, USDA, APHIS, Room 324-E, Administration Building, Washington, D.C. 20250, 202-447-6631.

SUPPLEMENTARY INFORMATION: Residues of sulfonamide drugs, which are used as feed additives for the control of certain swine diseases, were the subject of the public meeting conducted by the Department on January 16, 1978 (42 FR 62512). At the meeting, the stated purpose of which was to provide an opportunity for a frank exchange of issues surrounding this problem, topics such as withdrawal periods, tolerances, toxicology, legal requirements, husbandry practices, methodology, and regulatory alternatives were discussed.

After considering all of the comments offered at this public meeting, in addition to all other relevant materials, the Department has determined that a new program should be developed which will include field studies, laboratory research and an information program in order to reach this problem at its source and lower the incidence of sulfonamide residue levels in excess of prescribed tolerances, which are a cause of adulteration under the Federal Meat Inspection Act (21 U.S.C. 601 et seq.).

The program is to be administered by the Assistant Secretary for Marketing Services and the Administrator of the Animal and Plant Health Inspection Service, and the relevant delegations of authority are being amended accordingly. The Department believes this alignment of functions conforms to missions of the agencies involved and will enable the Department to serve the public more efficiently.

Accordingly, Part 2, Subtitle A, Title 7, Code of Federal Regulations is amended as follows:

Subpart C—Delegations of Authority to the Deputy Secretary, Assistant Secretaries, the Director of Economics, Policy Analysis and Budget, and the Director, Office of Governmental and Public Affairs

1. Section 2.17 is amended by revising paragraph (b)(28) to read as follows:

§ 2.17 Delegations of authority to the Assistant Secretary for Marketing Services

* * * * *

(b) * * *

(28) The Agricultural Marketing Act of 1946, section 203, 205, as amended (7 U.S.C. 1622, 1624) with respect to voluntary inspection and certification of inedible animal byproducts, inspection, testing, treatment, and certification of animals, and a program to investigate and develop solutions to the problems resulting from the use of sulfonamides in swine.

* * * * *

Subpart F—Delegations of Authority by the Assistant Secretary for Marketing Services

2. Section 2.51 is amended by revising paragraph (a)(28) to read as follows:

§ 2.51 Administrator, Animal and Plant Health Inspection Service.

(a) * * *

(28) The Agricultural Marketing Act of 1946, section 203, 205, as amended (7 U.S.C. 1622, 1624) with respect to voluntary inspection and certification of inedible animal byproducts, inspection, testing, treatment, and certification of animals, and a program to investigate and develop solutions to the problems resulting from the use of sulfonamides in swine.

* * * * *

(5 U.S.C. 321 and Reorganization Plan No. 2 of 1953.)

For Subpart C dated: March 29, 1978. For Subpart F dated: March 29, 1978.

BOB BERGLAND,
Secretary of Agriculture.
P. R. "BOBBY" SMITH,
Assistant Secretary for Marketing Services.

[FR Doc. 78-8816 Filed 4-3-78; 8:45 am]

[3410-02]

CHAPTER I—AGRICULTURAL MARKETING SERVICE (STANDARDS, INSPECTIONS, MARKETING PRACTICES), DEPARTMENT OF AGRICULTURE

SUBCHAPTER E—WAREHOUSE REGULATIONS

PART 102—GRAIN WAREHOUSES

Licensing of Grain Inspectors and Weighers

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action changes the definition of licensed inspectors and licensed weighers under the U.S. Warehouse Act to include inspectors and weighers licensed and/or authorized under the U.S. Grain Standards Act and the Agricultural Marketing Act of 1946. The change will result in an avoidance of duplication in licensing certain inspectors and weighers. The action will permit the use of one license to serve the licensing requirements of two laws where there is a common need.

EFFECTIVE DATE: April 4, 1978.

FOR FURTHER INFORMATION CONTACT:

John B. Gilmer, Warehouse Service Branch, Transportation and Warehouse Division, Agricultural Marketing Service, Department of Agriculture, Washington, D.C. 20250, 202-447-3616.

SUPPLEMENTARY INFORMATION: Notice is hereby given in accordance with the administrative procedure provisions in 5 U.S.C. 553, pursuant to the authority conferred by section 28 of the U.S. Warehouse Act, as amended (7 U.S.C. 241 et seq., hereinafter the "Warehouse Act"), that the warehouse regulations for the storage of grain appearing in Part 102 of Subchapter E of Chapter I in Title 7 of the Code of Federal Regulations are being amended. The purpose of such amendment is to avoid unnecessary duplication of administration action by permitting the recognition of a valid license or authorization issued under either the U.S. Grain Standards Act, as amended (7 U.S.C. 71 et seq., hereinafter the "Grain Standards Act"), or the Agricultural Marketing Act of 1946 (7 U.S.C. 1621-1627, hereinafter AMA of 46) as sufficient to qualify the holder thereof to perform the functions of a licensed inspector and/or weigher under the Warehouse Act.

Regulations under the Warehouse Act for grain warehouses require, with certain exceptions, that grain received into and delivered out of a licensed warehouse must be inspected and graded by an inspector licensed under the Act and must be weighed by a weigher similarly licensed under the Warehouse Act.

Under existing regulations the Agricultural Marketing Service, which is charged with the administration of the Warehouse Act, has recognized licenses issued under the Grain Standards Act or the AMA of 46 for the inspection of grain as sufficient to meet the license requirements for grain inspectors under the Warehouse Act. At those licensed warehouse facilities where there is no official inspection and/or official weighing performed by persons authorized or licensed under the Grain Standards Act or AMA of 46, inspectors and/or weighers will still be required to obtain a license under the Warehouse Act.

The safeguards afforded to depositors of grain at licensed warehouse facilities is hereby found to be sufficient for purposes of the Warehouse Act, when such facilities are serviced by persons authorized or licensed to perform official inspection and/or weighing under the Grain Standards Act and the AMA of 46 due to the similarity of inspection and weighing functions performed under the Grain Standards Act, the AMA of 46 and the Warehouse Act. The regulatory requirement that such inspection and/or weighing, regardless of who performs the service, take place as the grain is received into or delivered out of the licensed warehouse remains unchanged.

Recognition of the authority exercised under the Grain Standards Act and the AMA of 46 will be accomplished by a change in the definitions for inspectors and weighers which appear in the regulations promulgated under the Warehouse Act. Amendments are made in the appeal procedures to incorporate appeals under the AMA of 46. Corresponding amendments to other provisions of the said regulations are being made to conform these said provisions to the changes in the definition of licensed inspectors and weighers.

The present amendments to the regulations will not, in any way, relieve any inspector, weigher, sampler, or any other person regardless of whether they are licensed under the Warehouse Act, the Grain Standards Act or the AMA of 46, of the provisions of section 30 of the Warehouse Act which specifies criminal penalties for violations of the Warehouse Act taking place at federally-licensed warehouses.

Said regulations, therefore, are amended to read:

§ 102.2 [Amended]

1. Section 102.2 is amended to read: Paragraph (q) is amended to read:

* * * * *

(q) *Inspector.* (1) A person licensed under the provisions of section 11 of the U.S. Warehouse Act, section 8 of the U.S. Grain Standards Act, or the provisions of the Agricultural Marketing Act of 1946 and (2) a Federal employee authorized under section 8 of the U.S. Grain Standards Act, or under the provisions of the Agricultural Marketing Act of 1946 to inspect, grade and/or certificate the grade of grain stored or to be stored in a warehouse licensed under the U.S. Warehouse Act (the terms "duly licensed to inspect" and "licensed inspector" shall be defined accordingly).

* * * * *

Paragraph (r) is amended to read:

* * * * *

(r) *Weigher.* (1) A person licensed under the provisions of section 11 of the U.S. Warehouse Act, section 8 of the U.S. Grain Standards Act, or the provisions of the Agricultural Marketing Act of 1946 and (2) a Federal employee authorized under section 8 of the U.S. Grain Standards Act, or under the provisions of the Agricultural Marketing Act of 1946, to weigh and/or certificate the weight of grain stored or to be stored in a warehouse licensed under the U.S. Warehouse Act (the terms "duly licensed to weigh" and "licensed weigher" shall be defined accordingly).

* * * * *

A new paragraph (t) is included to read:

* * * * *

(t) *Agricultural Marketing Act of 1946.* The Agricultural Marketing Act of 1946 (7 U.S.C. 1621-1627) as amended.

* * * * *

Paragraph (t) designation is changed to paragraph (u) and amended to read:

* * * * *

(u) *Official Grain Standards of the United States.* The standards of quality or condition for grain, fixed and established by the Administrator of the Federal Grain Inspection Service under the U.S. Grain Standards Act or the Secretary of Agriculture under the Agricultural Marketing Act of 1946.

* * * * *

Paragraph (u) is amended by changing the letter designation from (u) to (v).

* * * * *

(u) [Redesignated as (v)]

2. Section 102.44 is revised to read:

§ 102.44 Grades and weights; bulk grain.

Except as provided in § 102.27 each warehouseman shall accept all storage and nonstorage grain and shall deliver out all storage and nonstorage bulk grain, other than specially binned grain, in accordance with the grades of such grain as determined by a person duly licensed to inspect and grade such grain and to certificate the grade thereof and in accordance with the weights of such grain as determined by a person duly licensed to weigh such grain and to certificate the weight thereof, under the Act, and the regulations in this part; or if an appeal from the determination of an inspector has been taken, either under the U.S. Grain Standards Act and regulations thereunder, the Agricultural Marketing Act of 1946 and the regulations thereunder or §§ 102.81 through 102.95, such grain shall be accepted for and delivered out of storage in accordance with the grades as finally determined in such appeal.

3. Section 102.57 is revised to read:

§ 102.57 License fees.

There shall be charged and collected a fee of $20 for each original warehouseman's license, and a fee of $10 for each amended or reinstated warehouseman's license applied for by a warehouseman, and a fee of $6 for each license or amendment thereto issued to an inspector and/or weigher under this Act.

§ 102.61 [Amended]

Paragraph (c) is deleted in its entirety.

Paragraph (d) is amended by changing the letter designation (d) to (c).

Paragraph (e) is amended by changing the letter designation (e) to (d).

Paragraph (f) is amended by changing the letter designation (f) to (e).

5. Section 102.63 is revised to read:

§ 102.63 Posting of licenses.

Each inspector or weigher shall keep his license conspicuously posted in a place designated for the purpose by the Service unless authorized by the Service not to do so.

6. Section 102.67 is amended as follows:

Paragraph (b) is amended to read:

§ 102.67 Weight certificate.

* * * * *

(b) In lieu of a weight certificate in the form prescribed in paragraph (a) of this section, an official weight certificate issued pursuant to the provisions of the U.S. Grain Standards Act, or an official weight certificate issued pursuant to the Agricultural Marketing Act of 1946 on grain which is stored or to be stored in a warehouse licensed under the U.S. Warehouse Act is acceptable for purposes of the Act and regulations in this part.

* * * * *

7. Section 102.80 is revised to read:

§ 102.80 Appeal procedure.

In case a question arises as to the true grade of grain stored or to be stored in a licensed warehouse, for which official grain standards of the United States are in effect and for which a grain inspection certificate has been issued in accordance with § 102.64, any interested party may take an appeal for the determination of the grade of such grain as provided in this section. If the grain inspection certificate involved was issued under the U.S. Grain Standards Act or the Agricultural Marketing Act of 1946, the appeal shall be governed by the regulations issued under those Acts respectively. *Provided,* That a copy of the Federal appeal grade certificate issued in the appeal, together with any receipt covering the grain filed in the appeal, shall be sent to the licensed warehouseman concerned, and a copy of the Federal appeal grade certificate shall be sent to the licensed inspector and to each other person shown by the record of the appeal to be interested therein. When the grain inspection certificate with respect to which the appeal is taken was issued under the U.S. Warehouse Act, the appeal shall be governed by §§ 102.81 through 102.95.

8. Section 102.91 is revised to read:

§ 102.91 Grain grade appeal fees.

The fees and charges in appeals under §§ 102.81 through 102.95 from grain inspection certificates issued under the U.S. Warehouse Act shall be the same as those prescribed in the regulations under the U.S. Grain Standards Act or the Agricultural Marketing Act of 1946, as applicable, for appeals from grain inspection certificates issued under those Acts. Such fees and charges shall be assessed against the appellant.

It is hereby found impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in public rulemaking procedure and postpone the effective date of these amendments until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in view of the fact that these changes do not add additional restrictions to warehouses licensed under the U.S. Warehouse Act or impose any additional requirements upon users of warehouse services, and the amendments should be made effective at the earliest possible date.

Done at Washington, D.C., March 29, 1978.

WILLIAM T. MANLEY,
Deputy Administrator,
Marketing Program Operations.

[FR Doc. 78-8773 Filed 4-3-78; 8:45 am]

[7590-01]

Title 10—Energy

CHAPTER I—NUCLEAR REGULATORY COMMISSION

LICENSED NUCLEAR MATERIALS AND FACILITIES

Licensee Safeguards Contingency Plans; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is correcting certain errors which appear in the document published in FR Doc. 78-7861.

EFFECTIVE DATE: June 6, 1978.

FOR FURTHER INFORMATION CONTACT:

Thomas F. Carter, Jr., Chief, Contingency Planning Branch, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, 301-427-4191.

In FR Doc. 78-7861, appearing at page 11962, in the issue for Thursday, March 23, 1978, make the following corrections:

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

1. On page 11964, second column, first paragraph, fifth line, the word "material" should be inserted after the word "nuclear"; second paragraph, sixteenth line, following the world "including", the comma should be deleted; second paragraph, twentieth line, the word "Parts" should read "Part".

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

2. On page 11965, second column, first paragraph, twenty-second line, the date "January 17, 1979" should read "March 23, 1978".

APPENDIX C—LICENSEE SAFEGUARDS CONTINGENCY PLANS

3. On page 11966, first column, fourth paragraph, twelfth line, the word "approximately" should read "appropriately".

Dated at Washington, D.C., this 29th day of March 1978.

For the Nuclear Regulatory Commission.

CHASE R. STEPHENS,
Chief, Docketing and
Service Branch.

[FR Doc. 78-8766 Filed 4-3-78; 8:45 am]

[8025-01]

Title 13—Business Credit and Assistance

CHAPTER I—SMALL BUSINESS ADMINISTRATION

[Rev. 4, Amdt. 6]

PART 108—LOANS TO STATE AND LOCAL DEVELOPMENT COMPANIES

Loans—Administrative Limits and Waivers Thereof

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: This rule authorizes SBA to establish administrative ceilings on dollar amounts of section 502 Local Development Company Loans, and to waive them in exceptional cases. These administrative ceilings are established to comply with the intent of Congress as expressed in the conference report on Pub. L. 94-305 which increased the statutory limits on such loans. The intent of this rule is that, while SBA will continue to make most of its loans below the administrative ceiling, it will have authority in exceptional cases to make loans up to the statutory limit.

EFFECTIVE DATE: March 15, 1978.

FOR FURTHER INFORMATION CONTACT:

William B. Dean, Chief, Development Company Loan Division, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416, 202-653-6842.

SUPPLEMENTARY INFORMATION: Section 502 of the Small Business Investment Act, as amended by Pub. L. 94-305 authorizes SBA to guarantee up to $500,000 on a loan or to make direct or immediate participation loans up to $500,000.

Since Congress intended that loans in the amount of the statutory limit should be made only in exceptional cases, administrative ceilings are established. In the case of section 502 "Local Development Company Loans" the administrative ceiling is $350,000, the prior statutory limitation.

It is the intent of this rule that the administration ceiling may be waived upon determination that a particular loan furthers a National, Agency, or Regional Program objective. Standards or examples of such objectives will be published in the FEDERAL REGISTER from time to time. A notice listing National, Agency, or Regional program objectives for the loan programs administered under Parts 118 and 122 of this chapter was published in 42 FR 61906 (FR Doc. 77-34941, December 7, 1977) and are to be used also in waiving the administrative limits established by this regulation.

The Small Business Administration has determined that this document does not contain a major proposal requiring preparation of an inflation impact statement under Executive Order 11821 and OMB Circular A107.

On January 23, 1978, there was published in the FEDERAL REGISTER (43 FR 3130) a notice of this proposed rulemaking. Interested parties were given an opportunity to submit comments no later than February 22, 1978.

No comments were received.

Accordingly, pursuant to authority contained in section 308(c) of the Small Business Investment Act of 1958 (SBI Act), 15 U.S.C. 687, as amended, notice is hereby given that SBA amends § 108.502-1 by adding to paragraph (d) two subparagraphs (3) and (4) as follows:

§ 108.502-1 Section 502 loans.

* * * * *

(d) Loan amount.

(1) * * *

(2) * * *

(3) The administrative ceiling on loans to assist each identifiable small business concern shall be $350,000 on loans made directly, or on immediate participation basis, or on SBA's share of guaranteed loans. However, in circumstances determined by SBA to constitute an exceptional situation the loan may be extended to the statutory limit of $500,000.

(4) Exceptional situations. An exceptional situation will be deemed to exist where SBA determines that the particular loan furthers a National, Agency, or Regional program objective. SBA may from time to time publish in the FEDERAL REGISTER, on the basis of developing experience, standards or examples illustrating National, Agency, and Regional objectives. SBA will not recognize any such objective until it has first been so published either under this part or other parts of this chapter which establish loan policy.

(Catalog of Domestic Assistance Programs, No. 59.013, State and Local Development Company Loans.)

Dated: March 24, 1978.

A. VERNON WEAVER,
Administrator.

[FR Doc. 78-8787 Filed 4-3-78; 8:45 am]

[7510-01]

Title 14—Aeronautics and Space

CHAPTER V—NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

PART 1204—ADMINISTRATIVE AUTHORITY AND POLICY

Inspection of Persons and Personal Effects on NASA Property

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: This amendment updates the existing published regulations to reflect current titles and organizational relationships in NASA as a result of the reorganization which became effective on November 8, 1977.

EFFECTIVE DATE: November 8, 1977.

ADDRESS: Security Division, National Aeronautics and Space Administration, Washington, D.C. 20546.

FOR FURTHER INFORMATION CONTACT:

Edwin H. Stevens, telephone 202-755-3400.

SUPPLEMENTARY INFORMATION: Since these amendments are only organizational title changes, notice and public procedure thereon are not required.

AUTHORITY: 42 U.S.C. 2455(a).

§ 1204.1002 [Amended]

1. Section 1204.1002 is amended in the first sentence by changing "Headquarters Administration Office" to "Headquarters Administration Division."

§ 1204.1002 [Amended]

3. Section 1204.1003(b) is amended at end of the sentence by changing "Director of Security" to "Director, Security Division."

A. M. LOVELACE,
Deputy Administrator.

[FR Doc. 78-8737 Filed 4-3-78; 8:45 am]

[1505-01]

Title 21—Food and Drugs

CHAPTER I—FOOD AND DRUG ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER B—FOOD FOR HUMAN CONSUMPTION

[Docket No. 77N-0036]

PART 182—SUBSTANCES GENERALLY RECOGNIZED AS SAFE

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

Correction

In FR Doc. 78-7370, appearing at page 11698 in the issue of Tuesday, March 21, 1978, the second word in the 25th line of the third column should read, "now".

[1505-01]

SUBCHAPTER E—ANIMAL DRUGS, FEEDS, AND RELATED PRODUCTS

[Docket No. 75N-0020]

PART 540—PENICILLIN ANTIBIOTIC DRUGS FOR ANIMAL USE

Correction

In FR Doc. 78-7368, appearing on page 11700 in the issue for Tuesday, March 21, 1978, the fourth from last line of the "SUPPLEMENTARY INFORMATION" paragraph should read "[provi-]sions of § 440.255c. Section 540.255c is".

[6560-01]

[FRL 876-7; FAP 6H5117/R34]

PART 561—TOLERANCES FOR PESTICIDES IN ANIMAL FEEDS ADMINISTERED BY THE ENVIRONMENTAL PROTECTION AGENCY

2-Ethoxy-2,3-dihydro-3,3-dimethyl-5-benzofuranyl methanesulfonate

AGENCY: Office of Pesticide Programs, Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a permanent tolerance for residues of the herbicide 2-ethoxy-2,3-dihydro-3,3-dimethyl-5-benzofuranyl methanesulfonate. The amendment to the regulations was requested by Fisons Corp. The amendment establishes a maximum permissible level for residues of the herbicide in sugar beet molasses.

EFFECTIVE DATE: April 4, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Henry Jacoby, Product Manager (PM) 24, Registration Division (WH-567), Office of Pesticide Programs, EPA, Room 401, East Tower, 401 M Street SW., Washington, D.C. 20460.

SUPPLEMENTARY INFORMATION: On February 24, 1978, the EPA published in the FEDERAL REGISTER (43 FR 7653) a notice of proposed rulemaking to amend 21 CFR 561.235 by establishing a regulation permitting the use of 2-ethoxy-2,3-dihydro-3,3-dimethyl-5-benzofuranyl methanesulfonate in beet fields to control weeds with a tolerance limitation resulting from such use for residues of the herbicide and its metabolites in sugar beet molasses at 0.5 part per million (ppm). This notice was published in connection with a petition (FAP 6H5117) submitted by Fisons Corp., Agricultural Chemicals Division, Two Preston Court, Bedford, Mass. 01730. (A related document concerning the establishment of tolerances for residues of the subject herbicide in or on sugarbeets and meat, fat, and meat byproducts appears elsewhere in today's FEDERAL REGISTER.) No comments or requests for referral to an advisory committee were received in response to this notice of proposed rulemaking.

The data submitted in the petition and other relevant material have been evaluated, and it has been concluded that the herbicide can be safely used in the prescribed manner when such use is in accordance with the label and labeling registered pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 7 U.S.C. 136 et seq.). Therefore, the regulation is being established as proposed.

Any person adversely affected by this regulation may, on or before May 4, 1978, file written objections with the Hearing Clerk, EPA, Room M-3708, 401 M Street SW., Washington D.C. 20460. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed to be objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by the grounds legally sufficient to justify the relief sought.

Effective on April 4, 1978, 21 CFR 561.235 is amended as set forth below.

(Section 409(c)(1) of the Federal Food, Drug, and Cosmetic Act 21 U.S.C. 348(c)(1).)

Dated: March 28, 1978.

EDWIN L. JOHNSON,
Deputy Assistant Administor for Pesticide Programs.

Part 561, Subpart A, section 561.235 is revised in the heading and in the text to read as follows:

§ 561.235 2-Ethoxy-2,3-dihydro-3,3-dimethyl-5-benzofuranyl methanesulfonate.

A tolerance of 0.5 part per million is established for combined residues of the herbicide 2-ethoxy-2,3-dihydro-3,3-dimethyl-5-benzofuranyl methanesulfonate and its metabolites 2-hydroxy-2,3-dihydro-3,3-dimethyl-5-benzofuranyl methanesulfonate and 2,3-dihydro-3,3-dimethyl-2-oxo-5-benzofuranyl methanesulfonate (both calculated as the parent compound) in sugar beet molasses resulting from application of the herbicide to growing sugar beets.

[FR Doc. 78-8881 Filed 4-3-78; 8:45 am]

[4410-01]

Title 28—Judicial Administration

CHAPTER I—DEPARTMENT OF JUSTICE

[Order No. 772-78]

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

Subpart X—Authorizations With Respect to Personnel and Certain Administrative Matters

DELEGATING CERTAIN ADDITIONAL PERSONNEL AUTHORITY TO THE DIRECTOR, EXECUTIVE OFFICE FOR U.S. ATTORNEYS

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: Existing regulations assign to the Director of the Executive Office for U.S. Attorneys authority to take final action in matters pertaining to the employment, direction, and general administration of non-attorney personnel in grades GS-1 through GS-15 and in Wage Board positions in the U.S. Attorneys' offices and the Executive Office for U.S. Attorneys. This order would assign to the Director of the Executive Office for U.S. Attorneys certain authority, presently exercised by the Assistant Attorney General for Administration, to administer the Incentive Awards Plan and to approve honorary awards and cash awards not in excess of $1,000, and to designate officers or employees to administer oaths of office, with respect to personnel in the Executive Office and in the U.S. attorneys' offices.

EFFECTIVE DATE: March 23, 1978.

FOR FURTHER INFORMATION CONTACT:

William P. Tyson, Acting Director, Executive Office for U.S. Attorneys, Department of Justice, Washington, D.C. 20530, 202-739-2121.

By virtue of the authority vested in me by 28 U.S.C. 509, 510 and 5 U.S.C. 301, 2903, §§ 0.143 and 0.151 of Subpart X of Part 0 of Chapter I of Title 28, Code of Federal Regulations, are each amended by inserting "the Director of the Executive Office for U.S. Attorneys," immediately after "Law Enforcement Assistance Administration" and by deleting "(including U.S. Attorneys)".

Dated: March 23, 1978.

GRIFFIN B. BELL,
Attorney General.

[FR Doc. 78-8756 Filed 4-3-78; 8:45 am]

[4510-26]

Title 29—Labor

CHAPTER XVII—OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, DEPARTMENT OF LABOR

PART 1902—STATE PLANS FOR THE DEVELOPMENT AND ENFORCEMENT OF STATE STANDARDS

Suspension of Action on State Petitions for Final Approval of State Plans and of the Application of the 2-Year Limitation on Initiating Such Proceedings; Correction

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Suspension of final rule; correction.

In FR Doc. 78-7054, appearing at pages 1195 and 1196 of the issue for Friday, March 17, 1978, the second line of the third paragraph in the second column on page 1196, now reading "§ 1902.38(a) of this chapter," should read "§ 1902.39(a) of this chapter."

FOR FURTHER INFORMATION CONTACT:

Barbara Bryant, 202-634-4922.

Signed at Washington this 27th day of March 1978.

EULA BINGHAM,
Assistant Secretary of Labor.

[FR Doc. 78-8599 Filed 4-3-78; 8:45 am]

[4510-29]

CHAPTER XXV—PENSION AND WELFARE BENEFIT PROGRAMS, DEPARTMENT OF LABOR

SUBCHAPTER C—REPORTING AND DISCLOSURE UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

PART 2520—RULES AND REGULATIONS FOR REPORTING AND DISCLOSURE

Annual Reporting Requirements; Final Regulations

AGENCY: Department of Labor.

ACTION: Final Regulations: Corrections.

SUMMARY: This document corrects certain provisions of the final annual reporting regulations, FR Doc. 78-6073 at page 10130 in the FEDERAL REGISTER of Friday, March 10, 1978.

EFFECTIVE DATE: April 10, 1978.

FOR FURTHER INFORMATION CONTACT:

Joe Bodnar, Pension and Welfare Benefit Programs, U.S. Department of Labor, Washington, D.C. 20216, 202-523-7901.

SUPPLEMENTARY INFORMATION: In FR Doc. 78-6073 appearing at page 10130 in the FEDERAL REGISTER of Friday, March 10, 1978, the following corrections are made.

1. On page 10130, under the heading "Contents" in the second paragraph, the nineteenth line the word "prusuant" is corrected to read "pursuant".

2. On page 10131, under the section headed "Exemptions", in the second paragraph of that section, the tenth line, the word "filed" is corrected to read, "files".

3. On page 10132, under the section headed "§ 2520.103-2", in the first paragraph of that section, the eleventh line, the word "annal" is corrected to read, "annual".

4. On page 10143, § 2520.103-6, paragraph "(a)", in the third line, the citation "§ 2520.103-10-(b)(5)" should read "§ 2520.103-10(b)(6)".

5. On page 10144, § 2520.103-6, paragraph "(e)(3)", the third line is corrected by deleting the word "to" which appears immediately after the word "represents".

6. On page 10144, § 2520.103-6, paragraph "(e)(6)", in the nineteenth line, the word "seurities" is corrected to read, "securities".

7. On page 10145, § 2520.103-9, paragraph "(a)", in the last line of that paragraph, the citation to paragraph "(b)(2)" should read "(b)(3)".

8. On page 10145, § 2520.103-9, paragraph "(c)", in the first and second line of that paragraph, the sentence

"See § 2520.104a-5(b)" should be deleted and the following sentence should be inserted, "The bank or insurance carrier shall file the information required by paragraph (b)(3)(i) of this section with the IRS Service Center servicing the geographic area in which the principal office of the bank or insurance carrier is located. See 'Where to file' instructions of the Annual Return/Report Form."

9. On page 10150, § 2520.104-41, paragraph "(b)", in the seventh line, the citation "2520.104-5" should read "2520.104a-5".

10. On page 10150, § 2520.104-42, paragraph "(a)", in the fourth line the word "anual" should read "annual".

11. On page 10151, § 2520.104-46 is corrected by inserting immediately after paragraph (b) the following paragraphs "(c)" and "(d)" as follows:

* * * * *

(c) *Waiver.* The administrator of a plan described in paragraph (b) (1) or (2) of this section is not required to:

(1) Engage an independent qualified public accountant to conduct an examination of the financial statements of the plan;

(2) Include within the annual report the financial statements and schedules prescribed in section 103(b) of the Act and §§ 2520.103-1, 2520.103-2, and 2520.103-10; and

(3) Include within the annual report a report of an independent qualified public accountant as prescribed in section 103(a)(3)(A) of the Act and § 2520.103-1.

(d) *Limitation.* The waiver described in this section does not affect the obligation of a plan described in paragraph (b) (1) or (2) of this section to file a Form 5500-C or -K and all schedules called for therein. See § 2520.104-41.

12. On page 10151, § 2520.104a-4, the caption "(b) Filing Address" is corrected by deleting "(b)" and inserting "(c)", to read as "(c) Filing Address".

13. On page 10151, § 2520.104a-4, the caption "(c) Effect" is corrected by deleting "(c)" and inserting "(d)", to read as "(d) Effect".

14. On page 10151, § 2520.104a-4, paragraphs "(c) Waiver" and "(d) Limitation" are deleted in their entirety.

15. On page 10152, § 2520.104a-5, paragraph "(a)(2)" is corrected by deleting the period at the end of the sentence in that subparagraph and adding the following ", unless extended. See 'When to file' instructions of the appropriate Annual Return/Report Form."

16. On page 10152, § 2520.104a-6, paragraph "(b)(2)" is corrected by deleting the period at the end of the sentence in that subparagraph and adding the following ", unless extended. See 'When to file' instructions of the appropriate Annual Return/Report Form."

Signed at Washington, D.C., on this 30th day of March, 1978.

IAN D. LANOFF,
Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration.

[FR Doc. 78-8806 Filed 4-3-78; 8:45 am]

[7708-01]

CHAPTER XXVI—PENSION BENEFIT GUARANTY CORPORATION, DEPARTMENT OF LABOR

PART 2605—GUARANTEED BENEFITS

PART 2608—INTERIM REGULATION ON ALLOCATION OF ASSETS

Amendments

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: These are amendments to the guaranteed benefits regulation and the interim regulation on allocation of assets. The amendment to the guaranteed benefits regulation provides that the Pension Benefit Guaranty Corporation will guarantee a plan benefit that returns a participant's mandatory employee contributions upon the participant's death or, if a participant in a terminating pension plan so elects, the PBGC will pay to the participant, in a single installment, the value of the participant's own mandatory contributions. The amendment is necessary because the Guaranteed Benefits regulation: (1) Does not explicitly provide for the PBGC to guarantee the return of an employee's mandatory employee contributions upon his or her death; and (2) does not permit the Pension Benefit Guaranty Corporation to pay in a single installment guaranteed benefits with a value greater than $1,750. The effects of the amendment are to: (1) Assure participants of the return of their mandatory contributions upon death even if their plan terminates without sufficient funds to cover the death benefit; and (2) allow participants in terminating pension plans to elect to receive all of their mandatory contributions to the plan in a single lump-sum payment, in lieu of the pension attributable to those contributions. The amendment better conforms the PBGC's guarantee to the intent of the Employee Retirement Income Security Act of 1974.

The amendment to the allocation of assets regulation is necessary to implement the Pension Benefit Guaranty Corporation's proposal to guarantee the benefit in a pension plan that returns, upon an employee's death, all or a portion of his or her mandatory contributions that remain in the plan. The effect of the amendment is to make the benefit that returns the employee's contributions a guaranteeable type of benefit for purposes of allocating plan assets.

The amendment contains other technical changes in the allocation of assets regulation that are designed to clarify the treatment of mandatory employee contributions and to assure that the portion of a participant's benefits attributable to his or her mandatory employee contributions does not change upon termination of the plan.

DATES: These amendments are effective May 4, 1978.

FOR FURTHER INFORMATION CONTACT:

Gerald E. Cole, Jr., Special Counsel, Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, D.C. 20006, telephone 202-254-4895.

SUPPLEMENTARY INFORMATION: On January 9, 1978, the PBGC published in the FEDERAL REGISTER proposed amendments to the guaranteed benefits regulation (29 CFR Part 2605) and the interim regulation on allocation of assets (29 CFR Part 2608, 42 FR 48480, Nov. 3, 1976). Although the only comment that the PBGC received initially objected to the proposed amendments, the objection was later withdrawn and replaced with a request that the PBGC clarify the amendments' effect on: (1) The allocation of assets, and (2) the cost of the termination insurance program.

The amendments broaden the PBGC's guarantee of priority category 2 benefits, by providing that the PBGC will guarantee a benefit that returns all or a portion of an employee's mandatory contributions upon the employee's death. Except in very rare cases, this additional guarantee does not increase the assets allocated to priority category 2 in the allocation of assets. The PBGC has found that most terminating pension plans have sufficient assets to provide benefits through priority category 2. Consequently, the additional guarantee will not add noticeably to the cost of the termination insurance program.

The PBGC has made two revisions in the amendments. First, the PBGC has added a new § 2608.7(a)(2). Like the last sentence in proposed § 2608.7(c), which it replaces, the new paragraph sets forth the annuity form (e.g., straight life, joint, and survivor, etc.) to be used in computing a participant's category 2 benefit. The proce-

dure for computing a priority category 2 benefit requires the conversion of employee contributions into the accrued benefit attributable to those contributions. The purpose of the new section is to ensure that the person making the conversion will convert contributions into a benefit form that is the same as the benefit form used in the other priority categories of the allocation. This assures that the allocation of assets in priority category 2 will be consistent with the allocation of assets in the other priority categories.

Second, the PBGC has corrected a technical error in § 2608.7(d)(1) of the proposed amendments. Under the proposal, an employee's entire accrued benefit would have been placed in priority category 2, even if the employee's accumulated mandatory contributions were sufficient to provide only a portion of the benefit. The PBGC's correction of § 2608.7(d)(1) conforms the amendment to the interim allocation of assets regulation.

In consideration of the foregoing, effective May 4, 1978, Chapter XXVI of Title 29, Code of Federal Regulations, is hereby amended as follows:

1. Section 2605.2 is amended by adding the following definitions:

§ 2605.2 Definitions.

* * * * *

"Accumulated mandatory employee contributions" means mandatory employee contributions plus interest credited on those contributions under the plan, or, if greater, interest required by section 204(c) of the Act.

"Mandatory employee contributions" means amounts contributed to the plan by a participant which are required as a condition of employment, as a condition of participation in such plan, or as a condition of obtaining benefits under the plan attributable to employer contributions.

* * * * *

2. Section 2605.4 is amended by revising paragraph (c) as follows:

§ 2605.4 Limitations.

* * * * *

(c) (1) Except as provided in paragraph (c)(2) of this section, the PBGC does not guarantee a benefit payable in a single installment (or substantially so) upon the death of a participant or his surviving beneficiary unless that benefit is substantially derived from a reduction in the pension benefit payable to the participant or surviving beneficiary.

(2) Paragraphs (a) and (c)(1) of this section do not apply to that portion of accumulated mandatory employee contributions payable under a plan upon the death of a participant, and such a benefit is a pension benefit for purposes of this part.

* * * * *

3. Section 2605.5 is amended by adding a new paragraph (a)(5) as follows:

§ 2605.5 Entitlement to a benefit.

(a) * * *

(5) In the case of a benefit that returns all or a portion of a participant's accumulated mandatory employee contributions upon death, the participant (or beneficiary) had satisfied the conditions of the plan necessary to establish the right to the benefit other than death or designation of a beneficiary.

* * * * *

4. Section 2605.6 is amended by revising paragraph (a) as follows:

§ 2605.6 Determination of nonforfeitable benefits.

(a) For purposes of this part, a benefit payable with respect to a participant is considered to be nonforfeitable, if on the date of termination of the plan the participant (or beneficiary) has satisfied all of the conditions required of him or her under the provisions of the plan to establish entitlement to the benefit, except the submission of a formal application, retirement, completion of a required waiting period, or death in the case of a benefit that returns all or a portion of a participant's accumulated mandatory employee contributions upon his or her death.

* * * * *

5. Section 2605.8 is amended by revising paragraphs (b) and (c) as follows:

§ 2605.8 Benefits payable in a single installment.

* * * * *

(b) (1) *Payment in single installments.* Notwithstanding paragraph (a) of this section, in any case in which the value of a guaranteed benefit is $1,750 or less, or in any case in which a benefit is payable under a plan for which the PBGC has issued a notice of sufficiency pursuant to section 4041 of the Act, the total value of the guaranteed benefit may be paid in a single installment. For purposes of determining the value of the guaranteed benefit, subtract from the value of the guaranteed benefit, any amounts that are returned under paragraph (b)(2) of this section, but only to the extent such amounts do not exceed the value of the portion of an individual's benefit derived from mandatory employee contributions that is guaranteed.

(2) *Return of employee contributions.*—(i) *General.* Notwithstanding any other provision of this part, the PBGC may pay in a single installment (or a series of installments) instead of as an annuity, the value of the portion of an individual's basic type benefit derived from mandatory employee contributions, if:

(A) The individual elects payment in a single installment (or a series of installments) before the sixty-first (61st) day after the date he or she receives notice that such an election is available; and

(B) Payment in a single installment (or a series of installments) is consistent with the plan's provisions.

For purposes of this part, the portion of an individual's basic type benefit derived from mandatory employee contributions is determined under § 2608.7 (priority category 2 benefits) of this chapter, and the value of that portion is computed under the applicable rules contained in Part 2610 (Valuation of Benefits) of this chapter.

(ii) *Set-off for distributions after termination.* The amount to be returned under paragraph (b)(2)(i) of this section is reduced by the set-off amount. The set-off amount is the amount by which distributions made to the individual after the date of plan termination exceed the amount that would have been distributed, exclusive of mandatory employee contributions, if the individual had withdrawn the mandatory employee contributions on the date of termination.

Example: Participant A is receiving a benefit of $600 per month when the plan terminates, $200 of which is derived from mandatory employee contributions. If the participant had withdrawn his contributions on the date of termination, his benefit would have been reduced to $400 per month. The participant receives two monthly payments after the date of plan termination. The set-off amount is $400. (The $600 actual payment minus the $400 the participant would have received if he had withdrawn his contributions multiplied by the two months for which he received the extra payment.)

(c) *Death benefits.*—(1) *General.* Notwithstanding paragraph (a) of this section, a benefit which would otherwise be guaranteed under the provisions of this part, except for the fact that it is payable solely in a single installment (or substantially so) upon the death of a participant, shall be paid by the PBGC as an annuity which has the same value as the single installment. The PBGC will in each case determine the amount and duration of the annuity based on all the facts and circumstances.

(2) *Exception.* Upon the death of a participant the PBGC may pay in a

single installment (or a series of installments) that portion of the participant's accumulated mandatory employee contributions that is payable under the plan in a single installment (or a series of installments) upon the participant's death.

* * * * *

6. Section 2608.7 is revised as follows:

§ 2608.7 Priority category 2 benefits.

(a) (1) *General.* The benefit in priority category 2 of each participant (or beneficiary) is the sum of the basic type and non-basic type benefits derived from the participant's accumulated mandatory employee contributions as of the date of plan termination. The accumulated mandatory employee contributions are determined under paragraph (b) of this section. The basic type and non-basic type benefits derived from accumulated mandatory employee contributions and the values of those benefits are determined under paragraph (c) of this section for plans subject to the minimum vesting standards contained in section 203 or in section 1012 of the Act, and under paragraph (d) of this section for plans that are not subject to the minimum vesting standards.

(2) *Form of annuity for computations under this section.* The procedure set forth in this section for computing a participant's (or beneficiary's) priority category 2 benefit requires the conversion of mandatory employee contributions into a benefit attributable to those contributions. This paragraph prescribes the form of benefit (e.g., straight life annuity, joint and survivor annuityu, etc.) into which the contributions are converted for purposes of the computations under this section. The form of benefit into which mandatory employee contributions are converted is the form of benefit to which the participant (or beneficiary) is entitled on the date of plan termination, or to which the participant (or beneficiary) would be entitled if the benefit were nonforfeitable on the date of plan termination. The type of benefit to which a participant (or beneficiary) is entitled is determined under § 2605.5 of this Chapter.

(b) *Accumulated mandatory employee contributions.*—(1) *Definition.* The accumulated mandatory employee contributions of a participant as of the date of plan termination are equal to the sum of the participant's mandatory employee contributions plus applicable interest, if any, on those contributions, reduced (but not below zero) by distributions from the plan to the participant (or beneficiary) that were made before the date of plan termination.

(2) *Computation.* The amount of a participant's accumulated mandatory employee contributions as of the date of plan termination is computed by:

(i) Adding:

(A) The participant's total mandatory employee contributions to the plan;

(B) Interest, if any, credited on mandatory employee contributions under plan provisions to the beginning of the first plan year to which the minimum vesting standards contained in section 203 or in section 1012 of the Act apply; and

(C) Interest, if any, under the plan on the sum of the amounts determined under paragraph (b)(2)(i)(A) and (b)(2)(i)(B) of this section from the beginning of the first plan year to which the minimum vesting standards contained in section 203 or in section 1012 of the Act apply until the earliest, of the date of the participant's retirement, the date of the participant's death, or the date of plan termination.

For purposes of this paragraph, the interest credited on mandatory employee contributions is equal to the greater of the amount of interest computed under paragraphs (b)(2)(i)(B) and (b)(2)(i)(C) of this section or the minimum amount of interest, if any, required to be credited on mandatory employee contributions under section 204(c) of the Act; and

(ii) Subtracting from the amounts determined under paragraph (b)(2)(i) of this section:

(A) Any payments or distributions from the plan to the participant or to his or her beneficiary before the date of plan termination, other than:

(*1*) Payments or distributions of benefits derived from voluntary employee contributions; or

(*2*) Payments or distributions on account of disability, to the extent such payments or distributions exceeded the participant's accumulated mandatory contributions at the time the payments or distributions were made; and

(B) Interest under paragraphs (b)(2)(i)(B) and (b)(2)(i)(C) of this section on any amounts described in paragraph (b)(2)(ii)(A) of this section, calculated from the date of such payments or distributions until the earliest of the date of the participant's retirement, the date of the participant's death or the date of plan termination.

(3) *Employee contributions used to provide current benefits.* Except as provided in paragraph (d) of this section (plans not subject to the minimum vesting rules), that portion of a participant's accumulated mandatory employee contributions used to provide ancillary benefits, such as life insurance or health insurance, may not be subtracted in determining accumulated employee contributions.

(c) *Plans subject to minimum vesting standards.* The amounts and values of the basic type and non-basic type priority category 2 benefits payable to a participant or beneficiary in a plan that is subject to the minimum vesting standards contained in section 203 or in section 1012 of the Act are determined under this paragraph.

(1) *Definition.* For purposes of this paragraph: "Net mandatory employee contributions" means the total mandatory contributions made by a participant exclusive of interest, less any payments or distributions that are substracted under paragraph (b)(2)(ii)(A) of this section.

(2) *Basic-type benefit.* A participant's (or beneficiary's) basic type priority category 2 benefits are:

(i) The portion of the accrued benefit that is derived from the participant's net mandatory employee contributions, computed using plan provisions, except that the accrued benefit derived from net mandatory employee contributions may not be less than the accrued benefit derived from net mandatory employee contributions as computed under rules contained in section 204(c) of the Act or section 411(c) of the Internal Revenue Code, as amended by the Act (delete "." and change to ";") and

(ii) The benefit, if any, under the plan that returns upon the death of the participant all or a portion of the participant's accumulated mandatory employee contributions, except: (A) A benefit that became payable in a single installment (or substantially so) because the participant died before the date of plan termination; and (B) benefits payable upon the participant's death that are included in the annuity form of the accrued benefit derived from net mandatory employee contributions described under paragraph (c)(2)(i) of this section (e.g., the survivor's portion of a joint and survivor annuity or the cash refund portion of a cash refund annuity).

(3) *Value of basic type benefit.* The value of the basic type priority category 2 benefit is the sum of the values of the benefits described in paragraphs (c)(2)(i) and (c)(2)(ii) of this section. The values are computed using the valuation factors contained in Part 2610 of this chapter that are applicable as of the date of plan termination.

(4) *Non-basic type benefit.* The value of the non-basic type priority category 2 benefit is the excess, if any, of the accumulated mandatory contributions determined under paragraph (b) of this section over the value of the basic type priority category 2 benefit determined under paragraph (c)(3) of this section.

(d) *Plans not subject to minimum vesting standards.* The amounts and values of the basic type and non-basic type priority category 2 benefits payable to a participant or beneficiary in a plan that is not subject to the mini-

mum vesting standards contained in section 203 or in section 1012 of the Act are determined under this paragraph.

(1) *Value of basic type benefit.* The value of the basic type priority category 2 benefit is the lesser of:

(i) The sum of:

(A) The value of the death benefit computed under paragraph (d)(4) of this section and

(B) The excess, if any, of a participant's accumulated mandatory contributions computed under paragraph (d)(3) of this section over the value of the death benefit; or

(ii) The value of the accrued benefit computed under paragraph (d)(5) of this section.

(2) *Value of non-basic type benefit.* (i) If the participant's accumulated mandatory employee contributions computed under paragraph (d)(3) of this section exceed the value of the basic type benefit computed under paragraph (d)(1) of this section, the value of the non-basic type priority category 2 benefit is the excess of the value of the participant's accumulated mandatory employee contributions computed under paragraph (d)(3) of this section over the value of the basic type benefit computed under paragraph (d)(1) of this section.

(ii) If the accumulated mandatory employee contributions computed under paragraph (d)(3) of this section do not exceed the value of the participant's basic type benefit computed under paragraph (d)(1) of this section, the value of the non-basic type benefit is zero.

(3) *Accumulated mandatory employee contributions.* For purposes of this paragraph "accumulated mandatory employee contributions" are mandatory employee contributions as defined in paragraph (b) of this section, except that the cost of ancillary benefits, such as life insurance or health insurance, that were provided by mandatory employee contributions is treated as a distribution for purposes of § 2608.7(b)(2)(ii)(A) (subtractions from mandatory employee contributions). The cost of such ancillary benefits for any given year is computed under the rules of the Internal Revenue Service used to compute such costs, and the portion of the participant's accumulated mandatory employee contributions used to provide such benefits is determined by multiplying the cost of the benefits by the percentage of the cost that was paid with mandatory employee contributions.

(4) *Death benefit.* For purposes of this paragraph, the value of the death benefit is the value of that portion of any benefit under the plan that would refund all or a portion of the participant's accumulated mandatory employee contributions upon his or her death, except: (i) A benefit that became payable in a single installment (or substantially so) because the participant died before the date of plan termination; and (ii) benefits payable upon the participant's death that are included in the participant's accrued benefit described under paragraph (d)(5) of this section (e.g., the survivor's portion of a joint and survivor benefit or the cash refund portion of a cash refund annuity). The value of the death benefit is computed under the valuation factors contained in Part 2610 of this chapter that are applicable as of the date of plan termination.

(5) *Accrued benefit.* For purposes of this paragraph, the value of the accrued benefit is the value of the accrued benefit under the plan, which value is computed under the valuation factors contained in Part 2610 of this chapter that are applicable as of the date of plan termination.

(Secs. 4002(b)(3), 4022, 4044, Pub. L. 93-406, 88 Stat. 1004, 1016-19, 1025-27 (29 U.S.C. 1302(b)(3), 1322, 1344 (Supp. V, 1975)).)

Issued in Washington, D.C., on this 30th day of March 1978.

RAY MARSHALL,
Chairman, Board of Directors, Pension Benefit Guaranty Corporation.

Issued on the date set forth above, pursuant to a resolution of the Board of Directors approving these regulations and authorizing its Chairman to issue them.

HENRY ROSE,
Secretary, Pension Benefit Guaranty Corporation.

[FR Doc. 78-8877 Filed 4-3-78; 8:45 am]

[3710-92]

Title 33—Navigation and Navigable Waters

CHAPTER II—CORPS OF ENGINEERS, DEPARTMENT OF THE ARMY

[ER 1110-2-4401]

PART 222—ENGINEERING AND DESIGN

Clearance for Power and Communication Lines Over Reservoirs

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Final rule.

SUMMARY: This document stipulates the requirements for establishing minimum vertical clearances when relocating existing or constructing new power and communication lines over waters of U.S. Army Corps of Engineers reservoirs. Present criteria set forth in ER 1110-2-4401, dated April 5, 1963, is being revised by this regulation to conform with the 1977 National Electrical Safety Code (ANSI C2) which was expanded to include clearances over reservoirs based on the surface area of the impoundment. This regulation specifies essentially the same clearances as those contained in ER 1110-2-4401 assuming larger boats will use the larger reservoirs. The purpose for changing the existing criteria is to establish uniformity with the last edition of the National Electrical Safety Code.

EFFECTIVE DATE: April 10, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Robert H. Bruck, Chief, Electrical and Mechanical Branch, Office, Chief of Engineers, Washington, D.C. 20314, 202-693-7340.

SUPPLEMENTARY INFORMATION: Frequently power and cummunication lines must be routed over Corps of Engineers reservoirs when new lines are constructed or existing lines are relocated. The Corps of Engineers has the responsibility to insure that no less than minimum clearances are maintained over all waters of reservoirs under their jurisdiction. This ER will be issued to Corps of Engineers Districts and Divisions to establish policies and procedures to assure that these clearances are maintained.

Until the final regulation is published in the FEDERAL REGISTER, field operating agencies having Civil Works responsibilities will utilize the policies and procedures contained in the proposed regulation to the fullest extent practicable. The regulation will become effective when published in final form in the FEDERAL REGISTER. Accordingly 33 CFR Part 222 is amended by adding a new § 222.5 as set forth below:

§ 222.5 Clearances for power and communication lines over reservoirs.

(a) *Purpose.* This regulation prescribes the minimum vertical clearances to be provided when relocating existing or constructing new power and communication lines over waters of reservoir projects.

(b) *Applicability.* This regulation applies to all field operating agencies having Civil Works responsibilities.

(c) *References:*

(1) ER 1180-1-1 (Section 73).

(2) National Electrical Safety Code (ANSI C2), available from IEEE Service Center, 445 Hoes Lane, Piscataway, N.J. 08854.

(d) *Definitions.*

(1) *Design High Water Level.* The design high water level above which clearances are to be provided shall be either (i) the elevation of the envelope profile of the 50 year flood, or flood series, routed through the reservoir with a full conservation pool after 50

years of sedimentation, or (ii) the elevation of the top of the flood control pool, whichever is higher.

(2) *Low Point of Line.* The low point of the line shall be the elevation of the lowest point of the line taking into consideration all factors including temperature, loading and length of spans as outlined in the National Electrical Safety Code.

(3) *Minimum Vertical Clearance.* The minimum vertical clearance shall be the distance from the design high water lever (paragraph d(1) above) to the low point of the line (paragraph d(2) above).

(e) *Required Clearances.* Minimum vertical clearances for power and communication lines over reservoirs shall not be less than required by section 23, rule 232 of the latest revision of the National Electrical Safety Code (ANSI C2).

(1) In general, minimum vertical clearances shall not be less than shown in Table 232-1, Item 7, of ANSI C2, even for reservoirs or areas not suitable for sailboating or where sailboating is prohibited.

(2) If clearances not in accordance with Table 232-1 of ANSI C2 are proposed, justification for the clearances should be provided.

(f) *Navigable Waters.* For parts of reservoirs that are designated as navigable waters of the United States, greater clearances will be provided if so required. The clearances required over navigable waters are covered by 33 CFR 322.5(i)(2) and are not affected by this regulation.

(Section 4 of the Flood Control Act of 1944, as amended (16 U.S.C. 460d).)

Dated: March 29, 1978.

JAMES N. ELLIS,
Colonel, Corps of Engineers, Executive Director, Engineer Staff.

[FR Doc. 78-8789 Filed 4-3-78; 8:45 am]

[3710-92]

[ER 1105-2-167]

PART 279—RESOURCE USE: ESTABLISHMENT OF OBJECTIVES

Planning Policy and Guidance for Establishment of Resource Use Objectives at all Civil Works Water Resource Projects

AGENCY: Corps of Engineers, DOD.

ACTION: Final rule.

SUMMARY: This document presents planning policy and guidance for establishing resource use objectives for all Civil Works water resources projects during post-authorization studies and reevaluation of completed projects. The regulation states that public use development and natural resources management at Corps water resource projects should highlight and take advantage of the particular qualities and characteristics associated with individual projects as viewed from a regional perspective. It is intended that Corps field offices, using the policy and guidance of this regulation, will be able to establish clear, concise, resource use objectives for each water resource project.

EFFECTIVE DATE: April 12, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Berton M. MacLean, Chief, Environmental Section, Planning Division, Directorate of Civil Works, telephone 202-693-7290.

NOTE.—The U.S. Army Corps of Engineers has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

Dated: April 12, 1978.

JAMES N. ELLIS,
Colonel, Corps of Engineers, Executive Director, Engineer Staff.

Part 279 is added to 33 CFR to read as set forth below:

Sec.

AUTHORITY: Pub. L. 89-72, "Federal Water Project Recreation Act," July 9, 1965 (79 Stat. 213 et seq.).

§ 279.1 Purpose.

This regulation provides policy and guidance for establishing resource use objectives for all Civil Works water resource projects during Phase I/Phase II post-authorization studies and reevaluation of completed projects.

§ 279.2 Applicability.

This regulation is applicable to all OCE elements and all field operating agencies having Civil Works responsibilities.

§ 279.3 References.

(a) Pub. L. 89-72, "Federal Water Project Recreation Act," July 9, 1965 (79 Stat. 213 et seq.).

(b) ER 1105-2-200, Multiobjective Planning Framework (33 CFR Part 290).

§ 279.4 Definitions.

For the purposes of this regulation:

(a) "Resource Use Objectives" are clearly written statements, specific to a given project, which specify the attainable options for resource use as determined from study and analysis of resource capabilities and public needs (opportunities and problems).

(b) "Natural resources" are those elements, features, conditions, etc., of land and water that can be characterized as physiographic, biological and/or aesthetic.

(c) "Public benefits" are the tangible and intangible gains to society directly attributable to a water resource project that satisfy the expressed or observed needs of the public (i.e., individuals, groups, organizations and local, county, state and federal governmental agencies).

(d) "Boundary plans" are Division/District wide maps clearly delineating the limits of each regional recreation market area for one or more Civil Works water resource projects.

§ 279.5 Policy.

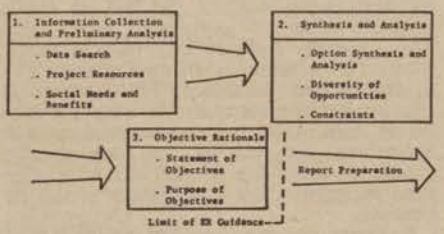
(a) It is the policy of the Chief of Engineers that all water resource projects administered by the Corps will have established a set of resource use objectives. These objectives will be based upon the expressed preferences of the residents of the region served (social option) and will be in keeping with the capabilities of the natural and man-made resources of the specific project (resource option). A regional analysis is required to tailor each project to serve expressed preferences within its resource capabilities and consistent with Federal laws and administrative cost-sharing policy. Preparation of regional studies and establishment of these objectives will utilize an interdisciplinary team with leadership by planning, and participation from engineering, design, real estate, and operations elements. Each project will emphasize those specific resource use objectives determined, through public participation, to achieve the greatest overall public benefit. Subsequent aspects of planning, development, and management for the specific project will be directed to achieving the approved resource use objectives.

(b) The implementation of this policy requires that the public be fully involved in the regional studies and development of resource use objectives and management plans for each specific water resource project, including at least one public meeting. The establishment of resource use objective may be addressed at a general public meeting held for the project if adequate discussion can be achieved. If not, the district engineer should conduct a separate meeting for this purpose.

§ 279.6 Overview of objective setting process.

The process of determining resource use objectives flows through three overlapping steps and considers three main sets of data. Figure 1 presents an overview of this process.

FIGURE 1. OVERVIEW OF RESOURCE USE OBJECTIVE PROCESS



§ 279.7 Information collection and preliminary analysis.

(a) *Data Search.* This effort consists of collecting existing data and accomplishing the minimum additional studies necessary to obtain the information required to generate and analyze the likely options. State and local agency input should be sought during this phase. The initial work will be to determine separately the options for resource use and public needs. A preliminary analysis comparing the two parts and their relationship to authorized project purposes and administrative constraints should be conducted prior to further public and agency input.

(b) *Project Resources.* The natural and man-made resources of the project area are to be identified and the interrelationships analyzed to generate the options that are most viable to the overall region. The environmental information and analysis, among other things, should define and describe the physical limitations of the project, aquatic and terrestrial vegetation, game and non-game wildlife species and distribution, fisheries, terrain, soils, minerals, climate, capacity and sensitivity of these resources to public use, archaeological and historical resources, management techniques, and ecosystem interactions.

(c) *Social Needs and Benefits.* The problems, opportunities, and desires of the people of the region to be served by the project must be identified in order to determine options that are in the best overall public interest. The basic approach for determining public needs and benefits is through a market analysis and a public involvement program. In considering options, the analysis as a minimum should include the indentification of the various publics served, views of other agencies and organizations, existing and planned recreational facilities in the market area of the consumer, the population base and distribution, institutional analysis of potential cost-sharing partners, constraints, the transportation network, the needs identified by local, State and Federal agencies, and the State Comprehensive Outdoor Recreation Plan (SCORP).

§ 279.8 Synthesis and analysis.

(a) *Option, synthesis and analysis.* The project resources and market area information should be aggregated and analyzed to determine what trade-offs can be made among the possible options to establish objectives that can meet the highest and best use of the natural and man-made resources, efficiently meet the needs of the public to be served, and be of lasting value to the region and the nation as a whole. The options determined in the first step should be synthesized to combine the separate elements. Compatible options in the two parts would result in rational resource use objectives. Conflicting options require trade-off analysis to determine to what extent compromise can be made, or if any compromise is possible to achieve acceptable objectives. In both cases the impacts, beneficial and adverse, of implementing the compatible or compromise objective(s) should be stated. For example, the preservation of wildlife habitat could limit the development of high intensity recreational facilities in a physically suitable area, resulting in a lower attainment of tangible recreation benefits. However, preservation of the existing habitat would produce intangible benefits to society by enhancing a species otherwise likely to be lost to the area.

(b) *Diversity of opportunities.* In regions where there are a number of Corps projects, this analysis must consider the larger regional context of interrelationships which will result in a diversity of opportunities available and emphasize the particular qualities of each project. For example, one project may emphasize swimming, another project weekend camping and power boating, while still another project may provide fishing and passive recreation use such as hiking trails, nature, and ecological study areas.

(c) *Constraints.* In addition to constraints imposed by the authorizing legislation, other project purposes and resource capabilities, the resource use objectives must be consistent and compatible with State and Regional planning activities and programs. As an example, Corps management actions to achieve resource use objectives must be compatible with the State approved Best Management Practices (BMP) for waste treatment (and non-point sources of pollution) as prescribed by section 208, Federal Water Pollution Control Act Amendments of 1972 (Pub. L. 92-500), as amended.

§ 279.9 Objective rationale.

(a) *Statement of Objectives.* The last step in this process is the summarization of the preceding work by clearly stating the objective(s) and providing the rationale, impact, and basic management measures for their accomplishment. The logic, trade-offs, and judgments made in the process should be presented in a concise and readable manner. The impacts, both beneficial and adverse, that will result from attaining objectives selected must be presented. General implementation measures (e.g., campground development, use of fish attractors, limiting use in environmentally sensitive areas, lake fluctuation control, etc.) should be stated as a guide for the preparation of detailed development plans and management actions to achieve the objectives.

(b) *Purpose of Objectives.* The resource use objectives for each project will guide the design, development and management of the resource base to obtain the greatest possible benefit through meeting the needs of the public and to protect and enhance environmental quality. The resource use objectives should be reflected in reports and plans relating to a study or restudy of water resource projects. Management actions on existing projects, including leasing and licensing, will also be directed towards the attainment of the approved resource use objectives.

§ 279.10 Implementation.

(a) Resource use objectives through development and management programs will be incorporated into Phase I, and Phase II General Design Memoranda and Master Plans for authorized and completed water resource projects (report requirements depend on AE&D status of project). The establishment of resource use objectives for projects formulated under the Part 290 of this chapter planning process should not require a great deal of additional effort to bring them in compliance with this regulation. However, more effort may be required for completed projects with existing use patterns and constructed facilities.

(b) Regional studies are prerequisite to effective project planning for establishment of resource use objectives. Division engineers are responsible for issuing criteria and instructions, for use by district engineers, on establishing regional boundaries, conduct of regional studies and content and format of report requirements. As a minimum, one criteria to consider is that a regional boundary could be formed by double the estimated distance from the centroids of population located within the market area of any operat-

ing project. Regional boundaries need not be restricted either to States or to District hydrologic boundaries. In those cases where a region may cross District boundaries, division engineers will establish administrative responsibility. District engineers are responsible for preparation of districtwide regional boundary plans, scheduling of study efforts, and report preparation. Boundary plans, study schedules and reports shall be submitted for approval in accordance with instructions issued by the division engineer. Four copies of the approved regional boundary plan and regional study report will be furnished to HQDA (DAEN-CWP-P), WASH DC 20314 for comment, in accordance with procedures given in ER 1110-2-1150. Investigations and report preparation for regional studies may be accomplished with funds from Operation and Maintenance General appropriations programmed for preparation of individual project Master Plans. Through implementation of the regional analysis approach, it is expected that an overall savings in individual Master Plan preparation can be realized. In any event, it is not expected that the overall program cost will increase.

(c) District engineers will incorporate the establishment of resource use objectives into the on-going Master Plan preparation process. Those Master Plans currently being prepared or updated and not substantially completed should be modified to reflect this policy. Those projects with high quality resources and/or conflicts between use and current resource management should be given a high priority so that redirection of facility development and management programs can be implemented as soon as possible.

§ 279.11 Responsibilities.

Division engineers will review the Districts Master Plan priority schedule and monitor regional studies and Master Plan preparation to insure timely compliance on development of resource use objectives. Future budget submissions and expenditures of construction and operation and maintenance funds will be reviewed by division engineers as to their relationship to the approved resource use objectives and management implementation. Questions and requests for technical assistance concerning implementation of the concept and guidance set forth in this regulation may be directed to HQDA (DAEN-CWP-P) WASH DC 20314 or DAEN-CWO-R.

For the Chief of Engineers.

JAMES N. ELLIS,
Colonel, Corps of Engineers, Executive Director, Engineer Staff.

APPENDIX A.—*Sample resource use objectives*

This appendix presents some example resource use objectives that might be derived for a water resource project. They are presented for illustrative purposes only and are not intended to represent any specific project or the full range of objectives that could be developed.

The following sample resource use objectives reflect what could result from a detailed analysis and evaluation of the resources on the project, the resources and opportunity in the general region, and the needs of the public. Each objective has a brief discussion on why that particular objective would be selected.

Resource use objective: To provide high quality swimming opportunity with a variety of high density day-use which include picnicking, beaches, play fields, tot lots, open space, walks, and non-power boating.

(Discussion) The analysis of regional and site specific factors indicates that this project with its small water surface and excellent water quality is not suitable for power boating; is in a suburban area with housing developments already adjacent to the project boundaries or presently planned; the natural resources have already been extensively disturbed; the soil conditions would be susceptive to extensive landscaping and could withstand high levels of public use; the water quality and waterland form characteristics are ideal for swimming and wading; there is currently a deficiency in available lake swimming, open space and day use activity facilities in the going market area; and there exists a non-Federal government agency to assist in carrying out this objective.

Resource use objective: To establish and maintain a high quality warm water fishery which would support an initial use of 70,000 fishermen recreation days.

(Discussion) The analysis of pertinent factors indicates that there exists a high demand for warm water fishing; that the water quality and other necessary environmental factors are present which would support a warm water fishery; that modified reservoir clearing, water level management and provision for fish shelters would provide necessary inputs for improved fish production; that some zoning on boat usage in certain embayments will decrease the conflicts between fishing and boating; and that current state fishery programs will provide assistance and the necessary technical advice.

Resource use objective: To establish an ecological study area at Wakulla Wash for the protection and study of its unique vegetative associations.

(Discussion) The analysis of pertinent factors indicates that high intensity recreation use demand can be satisfied at other areas on the project; the soil in the wash would be highly susceptible to erosion if the vegetation were removed; soil compaction would cause loss of ground cover; trails can be designed to avoid drainage and erosion problems; unique associations of vegetation exist in the wash; the nearest vehicle access point is one mile from the site; during public meetings local environmental groups have expressed an interest to preserve the area for educational purposes; there is a large population base within two hours drive of the project; two local universities have volunteered to administer the area in conjunction with their environmental course work and related work; and the County is zoning the adjacent land to protect the watershed of the Wash.

Resource use objective: To provide overnight use to accommodate transient cross-county travelers.

(Discussion) The analysis of regional and site factors indicate that this project with its small water surface and lack of scenic qualities does not experience much local use. A heavily traveled Interstate Highway with an interchange is within a quarter mile of the project boundary. The location of this project is such that it is within a days travel from major recreation areas; the soil conditions are suitable for high density public use and there is a deficiency of transient camping along this portion of the Interstate.

Resource use objective: To provide a high quality diversified recreation opportunity that would satisfy requirements for destination or vacation type activities.

(Discussion) The analysis of regional and site factors indicate that this project with its outstanding scenic qualities and its location, is suitable for destination or vacation type recreation activities. Private interest have expressed desires to provide sophisticated lodging and camping facilities together with other recreation development to provide for a diversity of recreation activities.

Resource use objective: To establish a cultural interpretive area for the protection, study and viewing of its unique archeological (historical) resource.

(Discussion) The analysis of pertinent factors indicates that high intensity recreation use demand can be satisfied at other areas on the project. The archeological (historical) site is one of the few sites that has not been destroyed over the years. The local archeological (historical) society has expressed an interest during public meeting in preserving and interpreting the site as part of their society program.

[FR Doc. 78-8788 Filed 4-3-78; 8:45 am]

[8320-01]

Title 38—Pensions, Bonuses, and Veterans' Relief

CHAPTER I—VETERANS ADMINISTRATION

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

DISABILITY COMPENSATION; SPECIALLY ADAPTED HOUSING

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The Veterans Administration is amending its regulations governing payment of disability compensation and entitlement to specially

adapted housing. The Veterans Disability Compensation and Survivor Benefits Act of 1977 increased disability compensation rates and authorized payment of the specially adapted housing grant based on loss or loss of use of one lower extremity together with one upper extremity which so affect propulsion as to preclude locomotion without the aid of braces, crutches, canes, or a wheelchair. The effect of these changes is to implement the new law. Two minor changes not directly related to the Act are also being made. One change is made to eliminate gender reference in a regulation. The other change deletes a monetary citation.

EFFECTIVE DATE: October 1, 1977.

FOR FURTHER INFORMATION CONTACT:

T. H. Spindle 202-389-3005.

SUPPLEMENTARY INFORMATION: On pages 64640-42 of the FEDERAL REGISTER of December 27, 1977, there was published a notice of proposed regulatory development to amend §§ 3.350, 3.461, 3.552 and 3.809.

Interested persons were given 30 days in which to submit comments, suggestions, or objections regarding the proposed regulations. We received seven comments. Five suggested changes in the entitlement requirements to receive the specially adapted housing allowance. None of these suggestions can be accomplished by regulation. Each suggestion will require legislation to implement. Another comment did not apply to any of the proposed regulation changes.

One commentator, however, made a number of suggestions which we can implement. We agree with all of them and are making the suggested changes.

First, this commentator points out that changes in §§ 3.460 and 3.461 do not result from enactment of Pub. L. 95-117 (91 Stat. 1063) as is stated in our December 27, 1977, notice of proposed rulemaking. (Although the amendment to § 3.460 was published no mention was made of the proposed change in the notice of proposed rulemaking. Since the change to § 3.460 is nonsubstantive, the term "widow or widower" was changed to "surviving spouse", notice is considered not necessary under 5 U.S.C. 553, and the omission is, therefore, immaterial.) The commentator is correct. The changes to these sections do not result from enactment of Pub. L. 95-117.

In §§ 3.460 and 3.461 the term "surviving spouse" is substituted for the term "widow and widower" because it is Veterans Administration policy to eliminate gender references whenever possible. The monetary amount is deleted from § 3.461 because the apportioned amount can vary depending upon individual case circumstances. In the place of a monetary amount the regulation is amended to indicate that the apportioned amount will be at a rate fixed by the Chief Benefits Director unless there are circumstances warranting a different amount.

Second, this commentator believes that the proposed amendment of paragraph (b)(3) of § 3.809 is ambiguous. It can be interpreted as meaning that entitlement to the specially adapted housing allowance is based on loss or loss of use of one lower extremity together with residuals of organic disease or injury without regard to whether the functions of balance or propulsion are affected. We think this point is well taken. Paragraph (b)(3) of § 3.809 is, therefore, amended to delete reference to entitlement based on loss or loss of use of one upper extremity. This makes it clear that the functions of balance and propulsion must be affected in the prescribed manner by the loss or loss of use of one lower extremity together with residuals or organic disease or injury. The criteria for entitlement based on loss or loss of use of one lower extremity together with loss or loss of use of one upper extremity are now separately stated in new paragraph (b)(4). This removes the ambiguity.

Third, this commentator believes that the term "other mechancial aid or contrivance" stated in paragraph (d) of § 3.809 should be changed to "braces, crutches, canes" to agree with the wording of 38 U.S.C. 801, as amended by Pub. L. 95-117. We agree. The final version of § 3.809 includes this suggested amendment.

The amendments to §§ 3.359, 3.460, 3.461, 3.552 and 3.809 are set forth below.

Approved: March 28, 1978.

RUFUS H. WILSON,
Deputy Administrator.

1. In § 3.350, paragraphs (a) (introductory portion preceding subparagraph (1)), (f)(1) (i) and (iii) and (2) (i) and (iii) and (h) are revised to read as follows:

§ 3.350 Special monthly compensation ratings.

The rates of special monthly compensation stated in this section are those provided under 38 U.S.C. 314.

(a) *Ratings under 38 U.S.C. 314(k).* Special monthly compensation under 38 U.S.C. 314(k) is payable for each anatomical loss or loss of use of one hand, one foot, both buttocks, one or more creative organs, blindness of one eye having only light perception, deafness of both ears, having absence of air and bone conduction, or complete organic aphonia with constant inability to communicate by speech. This special compensation is payable in addition to the basic rate of compensation otherwise payable on the basis of degree of disability, provided that the combined rate of compensation does not exceed $937 monthly when authorized in conjunction with any of the provisions of 38 U.S.C. 314 (a) through (j) or (s). When there is entitlement under 38 U.S.C. 314 (l) through (n) or an intermediate rate under (p) such additional allowance is payable for each such anatomical loss or loss of use existing in addition to the requirements for the basic rates, provided the total does not exceed $1,312 per month. The limitations on the maximum compensation payable under this paragraph are independent of and do not preclude payment of additional compensation for dependents under 38 U.S.C. 315, or the special allowance for aid and attendance provided by 38 U.S.C. 314(r).

* * * * *

(f) *Intermediate or next higher rate; 38 U.S.C. 314(p).*—(1) *Extremities.* (i) Anatomical loss or loss of use of one extremity with the anatomical loss or loss of use of another extremity at a level or with complications preventing natural elbow or knee action with prosthesis in place will entitle to the rate intermediate between 38 U.S.C. 314 (l) and (m). The monthly rate is $985.

* * * * *

(iii) Anatomical loss or loss of use of extremity at a level preventing natural elbow or knee action with prosthesis in place with anatomical loss of another extremity so near the shoulder or hip as to prevent the use of a prosthetic appliance will entitle to the rate intermediate between 38 U.S.C. (m) and (n). The monthly rate is $1,102.

(2) *Eyes, bilateral, and blindness in connection with deafness.* (i) Blindness of one eye with 5/200 visual acuity or less and blindness of the other eye having only light perception will entitle to the rate intermediate between 38 U.S.C. 314 (l) and (m). The monthly rate is $985.

* * * * *

(iii) Blindness of one eye having only light perception and anatomical loss, or blindness having no light perception accompanied by phthisis bulbi, evisceration or other obvious deformity or disfigurement of the eye, will entitle to a rate intermediate between 38 U.S.C. 314 (m) and (n). The monthly rate is $1,102.

* * * * *

(h) *Special aid and attendance benefit in maximum monthly compensation cases; 38 U.S.C. 314(r).* A veteran receiving the maximum rate ($1,312) of special monthly compensation under any provision or combination of provisions in 38 U.S.C. 314 who is in

need of regular aid and attendance is entitled to an additional allowance during periods he or she is not hospitalized at United States Government expense. (See § 3.552(b)(2) as to continuance following admission for hospitalization.) The rate is $563. Determination of this need is subject to the criteria of § 3.352. This additional allowance is payable whether or not the need for regular aid and attendance was a partial basis for entitlement to the maximum $1,312 rate, or was based on an independent factual determination.

* * * * *

2. In § 3.460, the introductory portion preceding paragraph (a) is revised to read as follows:

§ 3.460 Death pension.

Death pension will be apportioned if the child or children of the deceased veteran are not in the custody of the surviving spouse. Where the surviving spouse's rate is in excess of $70 monthly because of having been the wife or husband of the veteran during service or because of need for regular aid and attendance, the additional amount will be added to the surviving spouse's share.

* * * * *

3. Section 3.461 is revised to read as follows:

§ 3.461 Dependency and indemnity compensation.

(a) *Conditions under which apportionment may be made.* The surviving spouse's award of dependency and indemnity compensation will be apportioned where there is a child or children under 18 years of age and not in the custody of the surviving spouse. The surviving spouse's award of dependency and indemnity compensation will not be apportioned under this condition for a child over the age of 18 years.

(b) *Rates payable.* (1) The share for each of the chidren under 18 years of age, including those in the surviving spouse's custody as well as those who are not in such custody, will be at rates approved by the Chief Benefits Director except when the facts and circumstances in a case warrant special apportionment under § 3.451. The share for the surviving spouse will be the difference between the children's share and the total amount payable. In the application of this rule, however, the surviving spouse's share will not be reduced to an amount less than 50 percent of that to which the surviving spouse would otherwise be entitled.

(2) The additional amount of aid and attendance, where applicable, will be added to the surviving spouse's share and not otherwise included in the computation.

(3) Where the surviving spouse has elected to receive dependency and indemnity compensation instead of death compensation, the share of dependency and indemnity compensation for a child or children under 18 years of age will be whichever is the greater:

(i) The apportioned share computed under paragraph (b)(1) of this section; or

(ii) The share which would have been payable as death compensation but not in excess of the total dependency and indemnity compensation.

4. In § 3.552, paragraph (g) is revised to read as follows:

§ 3.552 Adjustment of allowance for regular aid and attendance.

* * * * *

(g) Where a veteran entitled to one of the rates under 38 U.S.C. 314 (1), (m), or (n) by reason of anatomical losses or losses of use of extremities, blindness (visual acuity 5/200 or less or light perception only), or anatomical loss of both eyes is being paid compensation of $1,312 because of entitlement to another rate under section 314(1) on account of need for aid and attendance the compensation will be reduced while hospitalized to the following:

(1) If entitlement is under section 314(l) and in addition there is need for regular aid and attendance for another disability, the award during hospitaization will be $1,032 since the disability requiring aid and attendance is 100 percent disabling. (38 U.S.C. 314(p).)

(2) If entitlement is under section 314(m), $1.172.

(3) If entitlement is under section 314(n), $1,312 would be continued, since the disability previously causing the need for regular aid and attendance would then be totally disabling entitling the veteran to the maximum rate under 38 U.S.C. 314(p).

* * * * *

5. In § 3.809, paragraphs (b)(3) and (d) are revised and paragraph (b)(4) is added so that the revised and added material reads as follows:

§ 3.809 Specially adapted housing.

* * * * *

(b) *Disability.* The disability must have been incurred or aggravated as the result of service as indicated in paragraph (a) of this section and the veteran must be entitled to compensation for permanent and total disability due to:

* * * * *

(3) The loss or loss of use of one lower extremity together with residuals of organic disease or injury which so affect the functions of balance or propulsion as to preclude locomotion without the aid of braces, crutches, canes, or a wheelchair.

(4) The loss or loss of use of one lower extremity together with the loss of loss of use of one upper extremity which so affect the functions of balance or propulsion as to preclude locomotion without the aid of braces, crutches, canes, or a wheelchair.

* * * * *

(d) *"Preclude locomotion."* This term means the necessity for regular and constant use of a wheelchair, braces, crutches or canes as a normal mode of locomotion although occasional locomotion by other methods may be possible. (38 U.S.C. 801, 804)

[FR Doc. 78-8800 Filed 4-3-78; 8:45 am]

[7710-12]

Title 39—Postal Service

CHAPTER I—U.S. POSTAL SERVICE

PART 111—GENERAL INFORMATION ON POSTAL SERVICE

Newspaper Receptacles on Rural Mailboxes

AGENCY: U.S. Postal Service.

ACTION: Final rule.

SUMMARY: This rule deletes language in section 156.532 of the Postal Service Manual which could be interpreted to permit receptacles used for the private delivery of newspapers to be attached to or be supported by rural mailboxes utilized by the Postal Service. The deletion will cause this section to be consistent with other postal regulations which generally prohibit the direct and indirect use of mailboxes to deliver matter not bearing postage. As revised, receptacles used for the private delivery of newspapers could continue to be attached to the posts or supports of rural mailboxes, so long as they were not attached to or supported by the rural mailboxes.

The current requirement in section 156.532 that the receptacles used for the private delivery of newspapers may not be restricted to any one newspaper will be deleted.

EFFECTIVE DATE: May 4, 1978.

FOR FURTHER INFORMATION CONTACT:

Jack T. DiLorenzo, 202-245-4614.

SUPPLEMENTAL INFORMATION: On January 13, 1978, the Postal Ser-

vice published in the FEDERAL REGISTER for comment, a proposal to delete language in section 156.532, Postal Service Manual, which could be interpreted to permit newspaper receptacles to be attached to or be supported by rural mailboxes utilized by the Postal Service and to delete language which provides that the newspaper receptacles cannot be restricted to any one newspaper. (43 FR 1966.)

Two telephone inquiries were received. One dealt with the questions whether the proposed rule would (a) bar the attaching of a newspaper receptacle on the post above or below the rural mailbox, and (b) eliminate the existing requirement that the newspaper receptacle not be limited to any one newspaper. The inquirer was advised:

(1) A newspaper receptacle could continue to be attached to the post above or below the mail receptacle so long as it was not attached to or supported by the mail receptacle, and

(2) The existing requirement that the newspaper receptacle not be limited to any one newspaper would be eliminated.

The second telephone inquirer sought and was given confirmation that the existing requirement that the newspaper receptacle not be limited to any one newspaper would be eliminated.

Nineteen written comments were received.

One commenter implicitly approved of the proposal and also recommended that the Postal Service go further and not permit newspaper receptacles to be attached to the post of the rural mailbox. We are not aware of any facts that would lead us to conclude that the Postal Service should not permit the attachment of a newspaper receptacle to the post.

One commenter opposed the proposal on the ground that because of severe snow conditions in his area, attachment of the newspaper receptacle to his rural mailbox, which is on a movable arm, prevents damage to the newspaper receptacle during snow removal. We believe that another method, for example, attaching the newspaper receptacle to another movable arm, could be devised to meet this problem.

Fourteen commenters objected to the proposal on the ground that the owners purchase and maintain the rural mailboxes and the owners, rather than the Postal Service, should decide whether the rural mailboxes may be used to assist in the delivery of matter not bearing postage.

Two commenters opposed the proposal whenever the newspaper receptacle did not interfere with delivery of mail.

One commenter opposed the proposal, subject to the condition that the newspaper receptacle be attached to the mail receptacle in a neat and orderly fashion.

Despite the preponderance of comments opposing this change, we believe the change should be made. While the mailbox is owned by the mail recipients, the box is used by the Postal Service, and we think it valid for the Postal Service to impose reasonable conditions on the use of the box. The Postal Service's right to do so derives from Federal law and is linked to the service the Postal Service provides through the box. It is not required that the box be owned by the Postal Service to justify reasonable regulatory restrictions on its use.

The views expressed above are consistent with recent court decisions that have supported Postal Service interpretation of regulations to exclude the attachment of non-mail matter to mailboxes. *Rockville Reminder, Inc.* v. *United States Postal Service*, 350 F. Supp. 590 (D. Conn. 1972), *aff'd*, 480 F. 2d 4 (2d Cir. 1973); *B&M Ltd.* v. *Smith*, 351 F. Supp. 1057 (July 14, 1972).

Material attached to mailboxes can interfere with the delivery of the mail and can jeopardize the security of the mail, as the District Court found in the *Rockville Reminder* case. We appreciate the thought that is behind the suggestion that only attachments that interfere with mail delivery or that are not neat or orderly be banned. Such a concept would be difficult to implement, however, since implementation would turn on subjective determinations. Postal employees might well hesitate to take action involving an offending practice because of the ill-will that could result from acting, if action were to be taken. Moreover, misunderstandings and conflict could develop between the postal customers and the users of the outside of mailboxes, on the one hand, and the Postal Service on the other. We believe that a clear objective rule would be preferable, and that the rule that leaves the box entirely free and clear is most in the public interest.

In view of the considerations discussed above, the Postal Service adopts the proposed revision of the Postal Service Manual with only minor editorial changes:

PART 156—RURAL SERVICE

In Part 156 of the Postal Service Manual, revise the first sentence to read as follows:

.532 *Newspaper receptacles.* A receptacle for the delivery of newspapers may be attached to the post of a letter box which is used by the Postal Service: *Provided*, That no part of the receptacle touches or is attached to or is supported by any part of the box, interferes with the delivery of mail, obstructs the view of the flag, or presents a hazard to the carrier or his vehicle.

A Post Office Services (Domestic) transmittal letter making this change in the pages of the Postal Service Manual will be published and will be transmitted to subscribers automatically. This change will be published in the FEDERAL REGISTER as provided in 39 CFR 111.3.

ROGER P. CRAIG,
Deputy General Counsel.

[FR Doc. 78-8786 Filed 4-3-78; 8:45 am]

[6560-01]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER E—PESTICIDE PROGRAMS

[FRL 876-1; PP 7F2005/R143]

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Bentazon

AGENCY: Office of Pesticide Programs, Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for residues of the herbicide bentazon. The request was submitted by BASF Wyandotte Corp. This amendment to the regulations will establish maximum permissible levels for residues of bentazon on bean, pea, peanut, and soybean forage and soybean hay.

EFFECTIVE DATE: April 4, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Robert Taylor, Product Manager (PM) 25, Registration Division (WH-567), Office of Pesticide Programs, EPA, 401 N Street SW., Washington D.C. 20460, 202-426-2632.

SUPPLEMENTARY INFORMATION: On October 19, 1977, notice was given (42 FR 55843) that BASF Wyandotte Corp., 100 Cherry Hill Road, P.O. Box 181, Parsippany, N.J. 07054, had filed a pesticide petition (PP 7F2005) with the EPA. This petition proposed that 40 CFR 180.355 be amended to establish tolerances for combined residues of the herbicide bentazon (3-isopropyl-1*N*-2,1,3-benzothiadiazin-4(3*H*)-one 2,2-dioxide) and its 6- and 8-hydroxy metabolites in or on the raw agricultural commodities bean forage, pea forage, peanut forage, and soybean forage at 3 parts per million (ppm) and to increase the established tolerance of 0.3 ppm on soybean hay to 3 ppm. No comments were received in response to this notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerances included an acute rat oral lethal dose 50 (LD_{50}) study at 1,100 milligrams (mg)/kilogram (kg) of body weight, a 90-day rat-feeding study with a no-effect level (NEL) of 70 ppm, a 90-day dog-feeding study with an NEL of 300 ppm, a three-generation rat reproduction study with an NEL greater than 180 ppm, a two-year rat-feeding/oncogenicity study with an NEL of 350 ppm, an 18-month mouse oncogenicity/feeding study with an NEL of 350 ppm, a teratogenicity study in the rat (negative), and a rat dominant lethal study with an NEL at 180 ppm.

Tolerances have previously been established for residues of bentazon on a variety of crops at levels ranging from 3 ppm to 0.02 ppm. The acceptable daily intake (ADI) is 10.5 mg/kg of body weight. The proposed and established tolerances result in a maximal theoretical exposure of 0.015 mg/day, which is less than 1 percent of the calculated ADI. The metabolism of the herbicide is adequately understood, and an adequate analytical method (gas chromatography using a flame photometric detector) is available for enforcement purposes.

There are no regulatory actions against continued registration of bentazon, no other data considered desirable but lacking, and no other relevant considerations in setting the proposed tolerances. The established tolerances for residues in eggs, meat, milk, or poultry are adequate to cover secondary residues resulting from the proposed use as delineated in 40 CFR 180.6(a)(2).

The pesticide is considered useful for the purpose for which tolerances are sought, and it is concluded that the tolerances of 3 ppm established by amending 40 CFR 180.355 will protect the public health. It is concluded, therefore, that the tolerances be established as set forth below.

Any person adversely affected by this regulation may, on or before May 4, 1978, file written objections with the Hearing Clerk, EPA, Room M-3708, 401 M Street SW., Washington, D.C. 20460. Such objections should specify the provisions of the regulation deemed to be objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by the grounds legally sufficient to justify the relief sought.

Effective April 4, 1978, 21 CFR Part 561 is amended as set forth below.

(Sec. 409(c)(1), Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348(c)(1).)

Dated: March 28, 1978.

EDWIN L. JOHNSON,
Deputy Assistant Administrator for Pesticide Programs.

Part 180, Subpart C, § 180.365 is amended in paragraph (a) by revising the tolerance of 0.3 ppm on soybeans, hay, and by alphabetically inserting the tolerances of 3 ppm on bean forage, pea forage, peanut forage, and soybean forage to read as follows:

1. In § 180.355 *Bentazon; tolerances for residues* the tolerance of 0.3 ppm on soybeans, hay in paragraph (a) is revised to read as follows:

§ 180.355 Bentazon; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Soybeans, hay	3
* * * * *	

2. In § 180.355 *Bentazon; tolerances for residues* the tolerances of 3 ppm on bean forage, pea forage, peanut forage, and soybean forage are alphabetically inserted in the list of commodities in paragraph (a) to read as follows:

§ 180.355 Bentazon; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Beans (except soybeans), forage	3
* * * * *	
Peanuts, forage	3
* * * * *	
Peas, forage	3
* * * * *	
Soybeans, forage	3
* * * * *	

[FR Doc. 78-8878 Filed 4-3-78; 8:45 am]

[6560-01]

[FRL 876-6; PP 6F1735/R148]

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

2-Ethoxy-2,3-dihydro-3,3-dimethyl-5-benzofuranyl methanesulfonate

AGENCY: Office of Pesticide Programs, Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for residues of the herbicide 2-ethoxy - 2,3 - dihydro - 3,3 - dimethyl - 5-benzofuranyl methanesulfonate. The amendment to the regulations was requested by Fisons Corp. This amendment establishes maximum permissible levels of the herbicide on sugar beets and in meat, fat, and meat by-products.

EFFECTIVE DATE: April 4, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Henry Jacoby, Product Manager (PM) 24, Registration Division, (WH-569), Office of Pesticide Programs, EPA, 401 M Street SW, Washington, D.C. 20460, 202-756-2197.

SUPPLEMENTARY INFORMATION: On February 24, 1978, the EPA published a notice of proposed rulemaking in the FEDERAL REGISTER (43 FR 7671) in response to a pesticide petition (PP6F1735) submitted to the Agency by Fisons Corp., Agricultural Chemicals Div., Two Preston Court, Bedford, Mass. 01730. This petition proposed that 40 CFR 180.345 be amended by the establishment of tolerances for residues of the herbicide 2-ethoxy-2,3-dihydro - 3,3 - dimethyl - 5 - benzofuranyl methanesulfonate and its metabolites 2-hydroxy-2,3-dihydro-3,3-dimethyl-5-benzofuranyl methanesulfonate and 2,3 - dihydro - 3,3 - dimethyl - 2 - oxo - 5-benzofuranly methanesulfonate in or on the raw agricultural commodities sugar beet tops at 1 part per million (ppm); sugar beet roots at 0.1 ppm; and in the meat, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep at 0.05 ppm. No comments or requests for referral to an advisory committee were received in response to this notice of proposed rulemaking. (A related document establishing a feed additive regulation for residues of the herbicide in sugar beet molasses appears elsewhere in today's FEDERAL REGISTER.)

It has been concluded, therefore, that the proposed amendment to 40 CFR 180 should be adopted without change, and it has been determined that this regulation will protect the public health.

Any person adversely affected by this regulation may, on or before May 4, 1978, file written objections with the Hearing Clerk, EPA, Room M-3708, 401 M Street SW., Washington, D.C. 20460. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed to be objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by the grounds le-

gally sufficient to justify the relief sought.

Effective April 4, 1978, part 180, subpart C, is amended by adding tolerances for residues of 2-ethoxy-2,3-dihydro - 3,3 - dimethyl - 5 - benzofuranyl methanesulfonate in or on sugar beet tops at 1 ppm; sugar beet roots at 0.1 ppm; and the meat, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep at 0.05 ppm as set forth below.

(Section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)).)

Dated: March 28, 1978.

EDWIN L. JOHNSON,
Deputy Assistant Administrator for Pesticide Programs.

It is proposed that part 180, subpart C, is amended by adding a new section to read as follows:

§ 180.345 2 - Ethoxy - 2,3 - dihydro - 3,3 - dimethyl - 5 - benzofuranyl methanesulfonate; tolerances for residues.

Tolerances are established for combined residues of the herbicide 2-ethoxy - 2,3 - dihydro - 3,3 - dimethyl - 5 - benzofuranyl methanesulfonate and its metabolites 2-hydroxy-2,3-dihydro - 3,3 - dimethyl - 5 - benzofuranyl methanesulfonate and 2,3-dihydro-3,3-dimethyl-2-oxo-5-benzofuranyl methanesulfonate (both calculated as the parent compound) in or on the following raw agricultural commodities:

Commodity	Parts per million
Beets, sugar, roots	0.1
Beets, sugar, tops	1.00
Cattle, fat	0.05
Cattle, mbyp	0.05
Cattle, meat	0.05
Goats, fat	0.05
Goats, mbyp	0.05
Goats, meat	0.05
Hogs, fat	0.05
Hogs, mbyp	0.05
Hogs, meat	0.05
Horses, fat	0.05
Horses, mbyp	0.05
Horses, meat	0.05
Sheep, fat	0.05
Sheep, mbyp	0.05
Sheep, meat	0.05

[FR Doc. 78-8880 Filed 4-3-78; 8:45 am]

[6820-24]

Title 41—Public Contracts and Property Management Regulations

CHAPTER 1—FEDERAL PROCUREMENT REGULATIONS

[FPR Temp. Reg. 44]

NATIONAL DEFENSE CONTRACTS

Cost Accounting Standards Board Requirements; Implementation

CROSS REFERENCE: For the text of a temporary regulation published by the General Services Administration on the subject of Cost Accounting Standards Board requirements regarding negotiated national defense contracts see FR Doc. 78-8767 appearing in the Notices section of this issue. Refer to the table of contents under "General Services Administration" for the page number.

[4910-62]

Title 49—Transportation

SUBTITLE A—OFFICE OF THE SECRETARY OF TRANSPORTATION

[OST Docket No. 1; Amend. No. 1-13]

PART 1—ORGANIZATION OF DELEGATION OF POWERS AND DUTIES

Federal Railroad Administrator

AGENCY: Department of Transportation.

ACTION: Final rule.

SUMMARY: This change will delegate to the Federal Railroad Administrator that authority under the Emergency Rail Services Act of 1970 (Act) previously reserved to the Secretary. The effect of this action will be that all authority under the Act will be vested in the Administrator of the Federal Railroad Administration. This consolidation of authority will aid the Department's efficiency in carrying out the Act.

EFFECTIVE DATE: April 4, 1978.

FOR FURTHER INFORMATION CONTACT:

Charles Swinburn, Associate Administrator for Federal Assistance, Federal Railroad Administration, 400 Seventh Street SW., Washington, D.C. 20590, 202-426-2257.

SUPPLEMENTARY INFORMATION: The persons responsible for drafting of this document are S. J. Park, III, Federal Railroad Administration, and Richard R. Clark, Office of the General Counsel.

The Secretary of Transportation has determined that greater efficiency can be accomplished in carrying out the Emergency Rail Services Act of 1970 (Act) (Pub. L. 91-663) by delegating to the Federal Railroad Administrator that authority previously reserved to the Secretary. This includes the authority to make findings required by section 3(a) of the Act and the authority to sign guarantees of certificates issued by the trustees.

Since this amendment relates to Departmental management, procedures, and practices, notice and public procedures thereon are not necessary.

In consideration of the foregoing, § 1.49(m) of title 49 of the Code of Federal Regulations is revised to read as follows:

§ 1.49 Delegations to Federal Railroad Administrator.

* * * * *

(m) Exercise the authority vested in the Secretary by the Emergency Rail Services Act of 1970 (Pub. L. 91-663).

* * * * *

(Sec. 9(e), Department of Transportation Act. (49 U.S.C. 1657(e)).)

Issued in Washington, D.C., on March 23, 1978.

BROCK ADAMS,
Secretary of Transportation.

[FR Doc. 78-8722 Filed 4-3-78; 8:45 am]

[7035-01]

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[Amendment No. 1 to Service Order No. 1290]

PART 1033—CAR SERVICE

The Chesapeake and Ohio Railway Co. Authorized To Operate Over Tracks of Consolidated Rail Corp.

AGENCY: Interstate Commerece Commission.

ACTION: Emergency Order (Amendment to Service Order No. 1290).

SUMMARY: Service Order No. 1290 authorizes the Chesapeake and Ohio Railway to operate over tracks of Consolidated Rail Corp. between Hallett, Ohio, and Walbridge, Ohio, to avoid congestion on the tracks of the Toledo Terminal Railroad Co. formerly used by the Chesapeake and Ohio to traverse this territory. Amendment No. 1 to Service Order No. 1290 extends the order for six months.

DATES: effective 11:59 p.m., March 31, 1978. Expires 11:59 p.m., September 30, 1978.

FOR FURTHER INFORMATION CONTACT:

C. C. Robinson, Chief, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C. 20423, telephone 202-275-7840, Telex 89-2742.

SUPPLEMENTARY INFORMATION: At a Session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 28th day of March, 1978.

Upon further consideration of Service Order No. 1290 (42 FR 63890), and good cause appearing therefor:

It is ordered, That: The Chesapeake and Ohio Railway Co. authorized to operate over tracks of Consolidated Rail Corp.

Service Order No. 1290 be, and it is hereby, amended by substituting the following paragraph (f) for paragraph (f) thereof:

§ 1033.1290 Service Orders 1290.

* * * * *

(f) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., September 30, 1978, unless otherwise modified, changed or suspended by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., March 31, 1978.

(49 U.S.C. 1(10-17).)

It is further ordered, That a copy of this amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that notice of this amendment be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John R. Michael.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-8827 Filed 4-3-78; 8:45 am]

[4310-55]

Title 50—Wildlife and Fisheries

CHAPTER I—UNITED STATES FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

PART 33—SPORT FISHING

Opening of Sherburne National Wildlife Refuge, Minnesota to Sport Fishing

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special Regulation.

SUMMARY: The Director has determined that the opening to sport fishing of Sherburne National Wildlife Refuge is compatible with the objectives for which the area was established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public.

DATES: May 1, 1978, through February 28, 1979.

FOR FURTHER INFORMATION CONTACT:

Refuge Manager, Route 2, Zimmerman, Minn. 55398 (R. V. Papike), phone 612-389-3323.

SUPPLEMENTARY INFORMATION:

§ 33.5 Special regulations; sport fishing; for individual; wildlife refuge areas.

Sport fishing is permitted on the Sherburne National Wildlife Refuge, Minn., only on the areas designated by signs as being open to fishing. These areas comprising approximately 1,000 acres are delineated on maps available at the refuge headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minn. 55111. Sport fishing shall be in accordance with all applicable State regulations subject to the following conditions:

1. The open season for sport fishing extends from May 1, 1978 through February 28, 1979, inclusive.

2. During periods when no ice exists, fishing activity is confined to the St. Francis River.

3. Access to all fish areas is permitted only at designated access sites.

4. Boats, without motors, may be used on the St. Francis River only from designated access sites.

5. The use of snowmobiles, all terrain vehicles, trail bikes, motorcycles, mini-bikes, and other such conveyances are prohibited on the refuge at all times.

The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50 Code of Federal Regulations, Part 33. The public is invited to offer suggestions and comments at any time.

NOTE.—The U.S. Fish and Wildlife Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11949 and OMB Circular A-107.

Dated: March 24, 1978.

R. V. PAPIKE,
Refuge Manager.

[FR Doc. 78-8797 Filed 4-3-78; 8:45 am]

[3410-34]

Title 9—Animals and Animal Products

CHAPTER I—ANIMAL AND PLANT HEALTH INSPECTION SERVICE, DEPARTMENT OF AGRICULTURE

SUBCHAPTER C—INTERSTATE TRANSPORTATION OF ANIMALS (INCLUDING POULTRY) AND ANIMAL PRODUCTS

PART 75—COMMUNICABLE DISEASES IN HORSES, ASSES, MULES, AND ZEBRAS

Contagious Equine Metritis (CEM); Quarantine

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this amendment is to quarantine certain animals of the breed of Thoroughbred horses in the entire Commonwealth of Kentucky because of the existence of contagious equine metritis (CEM). CEM, a communicable disease in equidae, has been diagnosed in the United States only in Thoroughbreds in the Commonwealth of Kentucky. In order to protect the equine industry of the United States from this highly contagious, communicable disease and the integrity of the export of equidae from the United States, it is necessary to quarantine all Thoroughbreds in the Commonwealth of Kentucky, except geldings, and certain weanlings or yearlings, animals moved only for racing, or exhibition purposes, and for artifical insemination breeding under certain conditions.

EFFECTIVE DATE: April 3, 1978.

FOR FURTHER INFORMATION CONTACT:

Dr. Ralph C. Knowles, USDA, APHIS, VS, Federal Building, Room 738, Hyattsville, Md. 20782, 301-436-8433.

SUPPLEMENTARY INFORMATION: Contagious equine metritis (CEM) is a highly contagious venereal disease caused by a bacteria which produces serious economic losses in Thoroughbred breeding establishments. To date, CEM has only been reported in Thoroughbreds, however, other breeds will develop the disease if exposed. Transmission of CEM can occur when affected stallions or mares are bred or the same contaminated instruments are used to examine the genital tract of affected animals and non-affected animals, or by other means such as washing the genital area of an affected animal and using the same water

and sponge among non-affected animals.

Initially two farms in Kentucky had stallions or mares which were determined to be positive for CEM. As of March 27, 1978, five stallions and 21 mares were determined to be positive. These 26 positive equidae were located on 13 different premises.

The regulations establish a quarantine only upon Thoroughbred horses moving from or through the State of Kentucky because CEM has been established to exist in the United States at present only in the breed of Thoroughbred horses and only in the Commonwealth of Kentucky.

The regulations permit the interstate movement of geldings, and weanlings and yearlings not known to be affected with or exposed to CEM or exposed to any horse affected with CEM, from or through the Commonwealth of Kentucky because these horses are not used for breeding purposes, and, therefore, do not pose a threat to spread CEM.

The regulations also permit horses of the Thoroughbred breed to move interstate into or from a quarantined area for purposes of racing or exhibition because the incidental contact between horses at such races or exhibitions is not likely to spread this disease.

Horses also may be moved interstate into or from the quarantined area for breeding by artificial insemination in the presence of and certified by a State or Federal animal health official authorized by the Deputy Administrator, Animal and Plant Health Inspection Service, Veterinary Services, USDA. Artifical insemination is allowed because such breeding, if properly conducted, is highly unlikely to spread the disease.

As of this date, we know of no practical method to determine that a farm is free of CEM. We will work with scientists and the industry to devise such a method. As soon as a practical method becomes available, we will modify the regulation to provide for movements from farms that have been determined to be free of CEM.

Accordingly, Part 75, Title 9, Code of Federal Regulations, is amended by adding § 75.5 to read as follows:

§ 75.5 Notice relating to existence of contagious equine metritis, quarantine and conditions of interstate movement.

(a) *Notice of quarantine.* Notice is hereby given that contagious equine metritis (CEM), a communicable disease of horses, mules, asses, and zebras exists in the breed of Thoroughbred horses in the Commonwealth of Kentucky and that the entire Commonwealth of Kentucky is hereby quarantined because of the existence of said disease.

(b) *Conditions of interstate movement.* No horses of the Thoroughbread breed shall be moved interstate from or thorugh any quarantined area except under the following conditions:

(1) Geldings may move interstate without restrictions;

(2) Weanlings or yearlings which are not known to be affected with or exposed to CEM or exposed to any horse affected with CEM may move interstate without restriction. Weanlings or yearlings include any animal not more than 731 days old on the date of the interstate movement.

(3) Horses of the Thoroughbred breed may be moved interstate into or from a quarantined area for racing, or exhibition purposes; or

(4) Horses of the Thoroughbred breed may be moved interstate into or from a quarantined area for breeding, only if such breeding is performed by artificial insemination in the presence of and certified by a State or Federal animal health official authorized by the Deputy Administrator.[3]

In view of the nature of the disease and circumstances under which it is disseminated and in order to prevent the interstate spread of the disease, it is necessary to quarantine the entire Commonwealth of Kentucky, and to permit the interstate movement of certain horses only under the above-specified conditions. The amendment must be made effective immediately to accomplish its purpose in the public interest.

Accordingly, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to the amendment are impracticable, unnecessary, and contrary to the public interest, and good cause is found for making the amendment effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 3rd day of April 1978.

NOTE.—The Animal and Plant Health Inspection Service has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

PIERRE A. CHALOUX,
Deputy Administrator,
Veterinary Services.

[FR Doc. 78-9082 Filed 4-3-78; 11:32 am]

[3] A copy of the list of authorized personnel can be obtained by writing to the Deputy Administrator, Animal and Plant Health Inspection Service, Veterinary Service, U.S. Department of Agriculture, Washington, D.C. 20250.

(Sections 4-7, 23 Stat. 32, as amended, sections 1 and 2, 32 Stat. 791-792, as amended, sections 1-4, 33 Stat. 1264, 1265, as amended (21 U.S.C. 111-113, 115, 117, 120, 121, 123-126), 37 FR 28464, 28477, 38 FR 19141.)

proposed rules

[3410-02]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 989]

[Docket No. AO-198 A-10]

RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

Hearing on Proposed Amendment of the Marketing Agreement, as Amended, and Order, as Amended

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Public hearing on proposed rulemaking.

SUMMARY: The hearing is being held to consider proposed changes in the marketing order. The principle issues to be considered are: (1) Procedures and administrative matters relating to volume regulation provisions including clarification of the intent of these provisions and making changes to reflect this intent; (2) making minor wording changes to clarify volume regulation provisions; and (3) making three types of raisins, which are now treated as a single varietal type, separate varietal types.

DATE: The hearing will be held April 18, 1978, at the location listed under addresses below.

ADDRESS: The hearing will be held in the Guarantee Room, Guarantee Savings and Loan, Blackstone and Ashlan Avenues, Fresno, Calif.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, 202-447-6393.

SUPPLEMENTARY INFORMATION: Notice is hereby given of a public hearing to be held April 18, 1978, beginning at 9:30 a.m., local time, with respect to proposed amendments of the marketing agreement, as amended, and Order No. 989, as amended, regulating the handling of raisins produced from grapes grown in California.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the furmulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendment, hereinafter set forth, and any appropriate modifications thereof, of the marketing agreement, as amended, and the order, as amended.

The proposed amendment, set forth below, has not received the approval of the Secretary of Agriculture.

PROPOSED BY THE RAISIN ADMINISTRATIVE COMMITTEE

PROPOSAL NO. 1

Section 989.54 (a) and (d) are revised to read as follows:

§ 989.54 Marketing policy.

(a) *Free tonnage.* On or before August 15 of each crop year, the Committee shall review shipment data, inventory data, and other matters relating to the quantity of raisins of all varietal types. For any varietal type for which a free tonnage percentage may be recommended, the quantity of free tonnage shall be 90 percent of the prior crop year's shipments into free tonnage outlets for that varietal type, adjusted by the physical carryin inventory. The desirable carryin inventory on August 1 for Natural (sundried) Seedless raisins shall be a minimum of 35,000 tons. This free tonnage quantity shall be publicized by the Committee in accordance with paragraph (f) of this section. In years following limited free tonnage shipments, the Committee may use the shipments of any one of the prior three years as a base to determine the free tonnage.

* * * * *

(d) *Reserve tonnage to sell as free tonnage.* On or before November 15 of the crop year, the Committee shall offer to handlers a quantity of the prior or current crop year's reserve tonnage raisins. One offer shall consist of a quantity equal to 10 percent of the prior year's shipments into free tonnage outlets, to equate the current year's supply with the prior year's shipments. This offer shall be allocated to handlers on the basis of their prior year's acquisitions. At the same time, the second offer shall consist of a quantity equal to 10 percent of the prior year's shipments into free tonnage outlets, for market expansion. The offer shall be allocated to handlers on the basis of their prior year's shipments, to all outlets, of free tonnage plus any reserve tonnage released for use as free tonnage during the applicable crop year. Each offer shall be open to handlers not more than five business days and, subsequently, two reoffers of any tonnage unsold in the original offers, open not more than two business days each, may be made. The reoffer tonnage shall be allocated to handlers who purchase 100 percent of their allocation in preceding offers and shall be on the basis of the quantity each handler purchased as a percentage of the total quantity purchased by all handlers eligible to participate. At the close of the second reoffer any remaining tonnage may be offered to handlers purchasing all of their previous allocations on a first-come, first-served basis and such offer shall be open to handlers for two business days. Any handler who had no shipments or acquisitions of raisins during the prior crop year would be allocated raisins under these offers on the basis of his acquisitions (up to the time the offer is made) of raisins in the current crop year. If field prices are not established on or before November 15, the offers shall be made not more than 15 days following such establishment. The price of reserve tonnage raisins offered to handlers to sell as free tonnage under this section shall be the established field price for free tonnage raisins of the applicable varietal type, plus estimated costs to equity holders incurred by the Committee, plus 3 percent of the established field price for free tonnage.

PROPOSED BY JOHN J. MCGREGOR, ATTORNEY-AT-LAW, FOR TRI-BORO FRUIT CO., INC., MELIKIAN FARMS, INC., AND SALWASSER DEHYDRATOR

PROPOSAL NO. 2

A new § 989.7a is added to read as follows:

§ 989.7a Water-Dipped Seedless raisins.

"Water-Dipped Seedless raisins" means raisins produced from grapes which are dipped in water, without any chemical additive, after such grapes have been removed from the vine and which are artificially dehydrated.

PROPOSAL NO. 3

A new § 989.7b is added to read as follows:

§ 989.7b Soda-Dipped Seedless raisins.

"Soda-Dipped Seedless raisins" means raisins made from grapes which are dipped in a solution consisting of a caustic soda additive after such grapes

have been removed from the vine and which are artificially dehydrated.

PROPOSAL NO. 4

A new § 989.7c is added to read as follows:

§ 989.7c Oleate Seedless raisins.

"Oleate Seedless raisins" means raisins produced from grapes which are sprayed with, or dipped in, an ethyl oleate or methyl oleate solution, after such grapes have been removed from the vine or while such grapes are on the vine and which are sun-dried or artificially dehydrated.

PROPOSAL NO. 5

Section 989.10 is revised to read as follows:

§ 989.10 Varietal types.

"Varietal types" means raisins generally recognized as possessing characteristics differing from other raisins in a degree sufficient to make necessary or desirable separate identification and classification. Varietal types are the following: Natural (sun-dried) Seedless, Water-Dipped Seedless, Soda-Dipped Seedless, Oleate Seedless, Golden Seedless, Muscats (including other raisins with seeds), Sultana, Zante Currant and Monukka: *Provided*, That the Committee may, subject to approval of the Secretary, change this list of varietal types.

PROPOSED BY THE FRUIT AND VEGETABLE DIVISION, AGRICULTURAL MARKETING SERVICE

PROPOSAL NO. 6

Make such changes as may be necessary to make the entire marketing agreement and the order conform with any amendment thereto that may result from this hearing.

Copies of this notice of hearing and the order may be procured from the Fresno Marketing Field Office, F&V Division, AMS, U.S. Department of Agriculture, 1130 "O" Street, Room 3114, Fresno, CA 93721, or from the Hearing Clerk, Room 1077, U.S. Department of Agriculture, Washington, D.C. 20250, or may be inspected there.

Signed at Washington, D.C. on March 30, 1978.

WILLIAM T. MANLEY,
Deputy Administrator,
Marketing Program Operations.

[FR Doc. 78-8774 Filed 4-3-78; 8:45 am]

[3410-02]

[7 CFR Part 1068]

MILK IN UPPER MIDWEST MARKETING AREA

Proposed Suspension of a Certain Provision of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This notice invites written comments on a proposal to suspend a requirement under the Upper Midwest milk marketing order that handlers make a partial payment for milk received from producers by the 25th day of the month. Handlers indicate that their producers want such payments to be made about 8 days later so that their partial payments and final payments for milk will be spaced about 15 days apart. The proposed suspension would be for May 1978 through April 1979.

DATE: Comments are due April 19, 1978.

ADDRESS: Comments (four copies) should be filed with the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT:

Martin J. Dunn, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-7311.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), the suspension of paragraph (a)(4) of § 1068.73 of the order regulating the handling of milk in the Upper Midwest marketing area is being considered for the period May 1978 through April 1979.

All persons who want to send written data, views, or arguments about the proposed suspension should send four copies of them to the Hearing Clerk, United States Department of Agriculture, Washington, D.C. 20250, on or before the 15th day after FEDERAL REGISTER publication.

The documents that are sent will be made available for public inspection at the Office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

Paragraph (a) of § 1068.73 requires handlers to make a partial payment to cooperative associations and nonmember producers on or before the 25th day of the month for milk delivered during the first 15 days of the month. Suspension of paragraph (a)(4) would remove this requirement only with respect to producers for whom a cooperative association is not collecting payments; the requirement would remain in effect for milk bought from a cooperative association.

Paragraph (a)(4) of § 1068.73 has been suspended since November 1976 (41 FR 51389, 42 FR 22360 and 42 FR 59747). A group of handlers request that the suspension be extended for an additional period of twelve months pending a hearing to consider an order amendment requiring a partial payment on or before the 3rd day of the month, 15 days prior to the final payment date, which is the 18th day of the month. This would enable such handlers to accommodate their producers who request that their payments be spaced about 15 days apart.

Signed at Washington, D.C., on March 30, 1978.

WILLIAM T. MANLEY,
Deputy Administrator.
Marketing Program Operations.

[FR Doc. 78-8772 Filed 4-3-78; 8:45 am]

[3410-05]

Agricultural Stabilization and Conservation Service

[7 CFR Part 729]

ACREAGE ALLOTMENTS, MARKETING QUOTAS, AND POUNDAGE QUOTAS FOR 1978 AND SUBSEQUENT CROPS OF PEANUTS

AGENCY: Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture.

ACTION: Proposed rule.

SUMMARY: This proposed notice sets forth the rules for establishing farm peanut allotments, farm yields, and farm poundage quotas to implement the Food and Agriculture Act of 1977. The rules for identification of marketings, assessment of marketing quota penalties, and processing of violation will be issued in a later amendment. The most significant provisions of this proposed rule are the determination of farm yields and poundage quotas and transfers on a poundage basis. This proposed rule is necessary in order that allotments and poundage quotas may be established for the 1978 and subsequent crops of peanuts.

DATE: Comments must be received before May 4, 1978.

ADDRESS: Send comments to the Director, Production Adjustment Division, Agricultural Stabilization and Conservation Service, USDA, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT:

Jack S. Forlines, Agricultural Stabilization and Conservation Service, 202-447-7935.

SUPPLEMENTARY INFORMATION: The Production Adjustment Division (ASCS) is inviting comments on this proposed rule. All written submissions will be available for public inspection at the Office of the Director, Production Adjustment Division, Room 3630, South Building, 14th Street and Independence Avenue SW., Washington, D.C., during regular business hours (7 CFR 1.27(b)).

PROPOSED RULE

It is proposed to revise 7 CFR §§729.1–729.45 to read as follows:

Subpart-Acreage Allotments, Marketing Quotas, and Poundage Quotas for 1978 and Subsequent Crops of Peanuts

AUTHORITY: Secs 301, 358, 358a, 359, 361–368, 372, 373, 375, 377, 52 Stat. 38, as amended, 55 Stat. 88, as amended, 81 Stat. 658, 55 Stat. 90, as amended, 52 Stat. 62, as amended, 63, as amended, 64, 65, as amended, 66, as amended, 70 Stat. 206, as amended; 7 U.S.C. 1301, 1358, 1358a, 1359, 1361–1368, 1372, 1373, 1375, 1377; and Secs. 801, 802, 803, 804, 805, 806, 91 Stat. 944 (7 U.S.C. 1358).

§ 729.1 Basis and purpose.

The regulations contained in this subpart are issued in accordance with the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1281 et seq.), and are applicable to peanuts for the 1978 and subsequent crops. They govern the establishment of farm acreage allotments and marketing quotas, farm poundage quotas, the issuance of marketing cards, the identification of marketings of peanuts, the collection and refund of penalties, and the keeping of records, and making reports incident thereto.

The allotment and marketing quota regulations for peanuts of the 1972 and subsequent crops (37 FR 2645 and 37 FR 3629, as amended) are superseded but remain effective with respect to the 1972 through the 1977 crops of peanuts.

§ 729.2 Extent of calculations and rule of fractions.

Round computations according to provisions of part 793 of this chapter. Express:

(a) Acreage and allotment in acres and tenths of acres.

(b) The percentage of excess peanuts for a farm in percent and tenths of a percent.

(c) A converted penalty rate in cents and hundredths of a cent per pound.

(d) Penalty or damages in dollars and cents.

(e) The quantity of peanuts marketed, a farm marketing quota, a farm poundage quota, a farm yield and an actual yield per acre in whole pounds.

(f) All factors as a four place decimal fraction.

§ 729.3 Definitions.

The definitions in and provisions of parts 718, 719 and 720 of this chapter are hereby incorporated in these regulations unless the context or subject matter or the provisions of these regulations requires otherwise. References to other parts of this chapter or title include any amendments to the referenced parts. Unless the context or subject matter requires otherwise, the following words and phrases, as used in this subpart and in all related instructions and forms, shall mean:

(a) *Act.* The Agricultural Adjustment Act of 1938, as amended.

(b) *Additional peanuts.* Any peanuts which are marketed from a farm other than peanuts marketed or considered marketed as quota peanuts.

(c) *Areas.* (1) The Southeastern Area consisting of the States of Alabama, Georgia, Mississippi, Florida, and that part of South Carolina south and west of the Santee-Congaree-Broad Rivers.

(2) The Southwestern Area consisting of the States of Arizona, Arkansas, California, Louisiana, New Mexico, Oklahoma, and Texas.

(3) The Virginia-Carolina Area consisting of the States of Missouri, North Carolina, Tennessee, Virginia, and that part of South Carolina north and east of the Santee-Congaree-Broad Rivers.

(d) *Base period.* The three calendar years immediately preceding the year for which farm allotments are being established.

(e) *Buyer.* A person who:

(1) Buys or otherwise acquires peanuts in any form;

(2) Markets, as a commission merchant, broker, or cooperative, any peanuts for the account of a producer and is responsible to the producer for the amount received for the peanuts; or

(3) Receives peanuts as collateral for or in settlement of a price support loan.

(f) *Considered planted.* Acreage determined for the current year for use in computing a future peanut allotment. Considered planted credit for a farm will be the sum of the acreage (limited to the farm acreage allotment less the planted acreage):

(1) Not planted because of natural disaster,

(2) Computed for pounds of quota transferred from the farm,

(3) In eminent domain pool,

(4) Preserved under provisions of part 719 of this chapter, and,

(5) Determined by subtracting the planted credit from the farm acreage allotment provided that the quantity of peanuts produced and marketed from the farm in the current marketing year was equal to or greater than 75 percent of the farm poundage quota.

(g) *Director.* The Director, or Acting Director, Production Adjustment Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture.

(h) *Effective farm acreage allotment.* The allotment determined under §729.12 of this chapter.

(i) *Effective farm poundage quota.* The quota determined under §729.12 of this chapter.

(j) *Excess acreage.* The amount by which the final acreage of peanuts exceeds the effective farm acreage allotment except that the excess acreage will not be considered as excess acreage when: (1) The final acreage is one acre or less, (2) no acreage and quota has been transferred from the farm or released to the county committee for reapportionment, and (3) no producer who shares in the peanuts also shares in peanuts on another farm.

(k) *Excess peanuts.* (1) The quantity of quota peanuts marketed or considered marketed in the current marketing year in excess of the effective farm poundage quota, or (2) peanuts produced on excess acreage.

(l) *Farm acreage allotment.* (1) *Old farm.* The preliminary farm acreage allotment for the current year multiplied by the current year State allotment factor plus any permanent adjustments.

(2) *New farm.* The allotment established according to §729.17 by the county committee with the concurrence of the State committee.

(m) *Farm base production poundage.* The pounds determined by multiply-

ing the farm acreage allotment by the farm yield and hereinafter referred to as the preliminary farm poundage quota.

(n) *Farm marketing quota.* The actual production of peanuts on the effective farm acreage allotment.

(o) *Farm poundage quota.* The pounds determined by multiplying the preliminary farm poundage quota by the national quota factor.

(p) *Farm yield.* The farm yield determined as provided in §729.14 of this chapter.

(q) *Farm peanut history acreage.* The acreage determined under §729.7 which is considered as devoted to peanuts on a farm for purposes of establishing future allotments.

(r) *Farmers stock peanuts.* Picked or threshed peanuts produced in the United States which have not been shelled, crushed, cleaned, or otherwise changed (except for removal of foreign material, loose shelled kernels, and excess moisture) from the state in which picked or threshed peanuts are customarily marketed by producers.

(s) *False identification.* False identification is:

(1) Identifying or permitting the identifying of peanuts at time of marketing as having been produced on a farm other than the farm of actual production; or

(2) Marketing or permitting the marketing of peanuts from a farm without identifying the peanuts with a peanut marketing card issued for the farm; or

(3) Permitting the use of the peanut marketing card for the farm to record a marketing of peanuts when, in fact, no peanuts were marketed from the farm.

(t) *Final acreage.* The acreage on the farm from which peanuts are picked or threshed as determined and adjusted under Part 718 of this chapter.

(u) *Green peanuts.* Peanuts which, before drying or removal of moisture from the peanuts either by natural or artificial means, are marketed by the producer for consumption exclusively as boiled peanuts.

(v) *Handler.* Any person or firm who acquires peanuts through a business of buying, shelling, or drying peanuts.

(w) *Inspector.* A Federal or Federal State inspector authorized or licensed by the Secretary, U.S. Department of Agriculture.

(x) *Market.* To dispose of peanuts, including farmers stock peanuts, shelled peanuts, cleaned peanuts, or peanuts in processed form, by voluntary or involuntary sale, barter, or exchange, or by gift inter vivos. The terms "Marketed", "marketing", and "for market" shall have corresponding meanings to the term "market' in the connection in which they are used. The terms "barter" and "exchange" shall include the payment by the producer of any quantity of peanuts for the harvesting, picking, threshing, cleaning, crushing, or shelling of peanuts, or for any other service rendered to him by anyone. Any lot of farmers stock peanuts will be considered as marketed when delivered by the producer to the buyer pursuant to an oral or written sales agreement. Peanuts which are delivered by the producer as collateral for or in settlement of a price support loan will be considered as marketed at the time of delivery. Any peanuts retained on the farm for seed or other use shall be considered marketings of quota peanuts.

(y) *Marketing year.* For each crop of peanuts, the period beginning August 1 of the current year and ending July 31 of the following year.

(z) *National poundage quota.* The pounds of peanuts determined and announced by the Secretary for the marketing year as the quantity needed to meet total estimated requirements for domestic edible use and a reasonable carryover and which shall not be less than the following amounts: 1978, 1,680,000 tons; 1979, 1,596,000 tons; 1980, 1,516,000 tons; and 1981, 1,440,000 tons.

(aa) *National quota factor.* The factor determined by dividing the national poundage quota for the marketing year by the total of (1) the preliminary poundage quotas for all farms having a peanut allotment and (2) the product of the total unused reserve acreage in all States times the national average farm yield.

(bb) *New farm.* A farm for which a peanut allotment and farm poundage quota is established in the current year and for which there is no peanut history acreage in the base period.

(cc) *Old farm.* A farm for which there is peanut history acreage in one or more years of the base period.

(dd) *Planted credit.* The final acreage of peanuts on a farm plus the acreage of peanuts receiving failed acreage credit under the provisions of Part 718 of this chapter.

(ee) *Peanuts.* All peanuts produced, excluding any peanuts which were not picked or threshed before or after marketing from the farm, as established by the producer or otherwise in accordance with this subpart, or where marketed by the producer before drying or removal of moisture from such peanuts by natural or artificial means for consumption exclusively as boiled peanuts (referred to as "green peanuts").

(ff) *Preliminary farm acreage allotment. The acreage allotment determined under § 729.8 of this chapter.*

(gg) *Preliminary farm poundage quota.* The same as the farm base production poundage.

(hh) *Productivity pool.* Increase or decrease in acreage resulting from permanent transfers.

(ii) *Quota peanuts.* Peanuts (except green peanuts) which are marketed or considered marketed from a farm for domestic edible use.

(jj) *Seed sheller.* A person who in the course of his usual business operations shells peanuts for producers for use as seed for the subsequent year's crop.

(kk) *State allotment factor.* The factor determined by dividing the State's share of the national acreage allotment, less the acreage reserved under the provisions of this Part, by the sum of the preliminary allotments on all farms in the State plus the acreage in the State productivity pool.

(ll) *Undermarketings.*—(1) *Actual undermarketings.* The pounds by which the effective farm poundage quota exceeds the pounds marketed or considered marketed as quota peanuts.

(2) *Effective undermarketings.* The amount by which the farm poundage quota on an eligible farm shall be increased for undermarketings and which shall be determined as follows:

(i) The farm shall be an eligible farm if the planted acreage of peanuts in the preceding year was equal to or greater than the product of the national quota factor times the farm acreage allotment in effect after approval of any transfer agreement which was filed before June 15.

(ii) If 10 percent of the national poundage quota for the marketing year during which the actual undermarketings occurred is equal to or greater than the actual undermarketings on all eligible farms, the increase shall be the same as the actual undermarketings.

(iii) If the conditions in paragraph (ii) above are not applicable the increase will be apportioned to each eligible farm in such manner that the increase will not be less than the smaller of the actual undermarketings or 10 percent of the effective farm poundage quota, will not be more than the actual undermarketings, and will be apportioned so as to cause the total of the increases on all eligible farms to equal 10 percent of the national poundage quota for the marketing year during which the actual undermarketings occurred.

(mm) *Yield per acre or actual yield.* The actual yield per acre for the farm obtained by dividing the total production of peanuts for the farm by the final acreage.

§ 729.4 Types of peanuts.

The generally known types of peanuts have identifying characteristics as follows:

(a) *Runner type peanuts.* Commonly knows as African Runner, Alabama Runner, Georgia Runner, Carolina Runner, or Wilmington Runner, Dixie Runner, or Runner; produced principally in the Southeastern peanut-producing area of the United States and

identified by the following characteristics: Typically two-seeded pods which are practically cylindrical, medium sized, stem end round and the other pointed with a slight keel having shells fairly thick and strong, with shallow veining and corrugation; seeds crowded in pod with adjacent ends sharply shouldered.

(b) *Spanish type peanuts.* Commonly known as White Spanish, Small Spanish, Medium-Small Spanish, or Spanish; produced principally in the Southeastern and Southwestern peanut-producing areas of the United States and identified by the following general characteristics: Typically two-seeded pods which are small, with both ends rounded, the end opposite the stem having an inconspicuous point or keel, and the waist slender; shells very thin, with veining and corrugation but not deep, and seed globular to oval and practically smooth.

(c) *Valencia type peanuts.* Commonly known as New Mexico Valencia, Tennessee Valencia, Tennessee White, Tennessee Red, or Valencia; produced principally in Tennessee and New Mexico and identified by the following general characteristics: Typically three or four-seeded, and sometimes five-seeded pods which are long and slender, with the end opposite the stem having a definite point or keel with conspicuous veining and corrugation, and seeds globular to oval.

(d) *Virginia type peanuts.* Commonly known as Virginia Runner, Virginia Bunch, North Carolina Runner, North Carolina Bunch, Jumbo, or Virginia; produced principally in North Carolina, Virginia, northeastern South Carolina, and Tennessee, and identified by the following general characteristics: Typically two-seeded pods which are of an average size larger than any other type, pods are roughly cylindrical, with veining and corrugation deep, and seeds cylindrical with pointed ends, length two or three times diameter, and practically smooth.

§ 729.5 Supervisory authority of State committee.

The State committee shall take any action required to be taken by the county committee which the county committee fails to take and the State committee shall correct or require the county committee to correct any action taken by the committee which is not according to this subpart. The State committee shall also require the county committee to withhold taking any action which is not according to this subpart.

§ 729.6 Instructions and forms.

The Director shall cause to be prepared and issued such forms and instructions as are necessary for carrying out the regulations in this part. The forms and instructions shall be approved by and the instructions shall be issued by the Deputy Administrator.

§ 729.7 Determination of farm peanut history acreage.

(a) *Maximum history acreage.* The farm peanut history acreage for any year shall not exceed the farm peanut allotment for such year.

(b) *Farm acreage allotment fully preserved.* The peanut history acreage for the current year is the same as the farm acreage allotment if in the current year or either of the two preceding years, the planted and considered planted acreage of peanuts was as much as 75 percent of the results obtained after subtracting the acreage temporarily released and the acreage reduced for violation from the:

(1) Farm acreage allotment for 1976 and 1977 years; or

(2) Farm acreage allotment times the national quota factor for 1978 and subsequent years.

(c) *Computation of history acreage.* If the full allotment is not preserved as peanut history acreage under paragraph (b) of this section, the farm peanut history acreage for the current year shall be the planted and considered planted acreage for the current year plus any current year acreage reduction for violation and for acreage temporarily released.

(d) *Reduction of previously determined history.* Notwithstanding any other provision of this subpart, the peanut history acreage for each year of the base period shall be zero unless in one or more years of the base period the farm could have received peanut history acreage other than from acreage released to the county committee or acreage reduction(s) for the violation of marketing quotas.

§ 729.8 Determination of preliminary farm acreage allotment.

The county committee shall not establish a preliminary farm acreage allotment for a farm if all of the cropland on the farm has been retired from agricultural production and the cropland was not and could not have been acquired under the right of eminent domain. In all other cases, the county committee shall establish a preliminary farm acreage allotment which shall be:

(a) The average of the preceding year's farm acreage allotment and farm history acreage if the farm history acreage is less than 75 percent of the farm acreage allotment.

(b) The preceding year's farm acreage allotment if the preceding year's farm history acreage is equal to or greater than 75 percent of the preceding year's farm acreage allotment.

§ 729.9 Reserves for corrections, missed farms, inequities and for new farms.

(a) The State committee shall establish a reserve acreage from the State allotment for correcting errors in farm allotments, for establishing allotments for missed farms, and for adjusting inequities. The reserve shall not exceed 2 percent of the State allotment and shall be used to the extent available to correct errors and/or establish allotments for missed farms before adjusting inequities.

(b) In addition to the reserve in paragraph (a) the State committee shall establish a State reserve for new farms based on estimated requirements but not to exceed one percent of the State allotment.

(c) Within the limitations provided in paragraph (a) the State committee may make acreage from the State reserve established under this section available to the county committees for adjusting inequities in farm acreage allotments. To the extent that reserve acreage is available, the county committee may adjust an inequity in the farm acreage allotment if it determines with approval of a representative of the State committee that the adjustment is necessary to establish an allotment for the farm which is equitable when compared with the allotment on other similar old farms in the locality. Upward adjustments shall be made on the basis of the farm peanut history acreage for the base period; labor and equipment available for the production of peanuts; crop-rotation practices; and soil and other physical factors affecting the production of peanuts.

§ 729.10 Computation of farm acreage allotments for old farms.

The farm acreage allotment for each old farm for the current year shall be computed by multiplying the preliminary allotment for such farm by the State allotment factor.

§ 729.11 Additional acreage allotment for farms producing types of peanuts in short supply.

(a) Any additional acreage allotment apportioned to any State producing peanuts of a type or types determined to be in short supply for the current year, less a reserve for the correction of errors, shall be apportioned among farms on which peanuts of such type or types were produced in any of the 3 years of the base period. The reserve for the correction of errors shall be determined by the State committee on the basis of experience in past allotment programs and its knowledge as to the reliability of data used in apportioning the additional acreage to farms, and shall not exceed 1 percent of the additional acreage apportioned to the State. For each farm eligible to share in the additional acreage apportioned to the State, the county committee shall determine that part of the total farm peanut history acreages for the base period that was devoted

to, or considered devoted to, the respective type of peanuts determined to be in short supply. A factor shall be computed by dividing the additional acreage apportioned to the State for the respective type (minus the reserve for the correction of errors) by the State total of acreage devoted to the respective type. The factor(s) shall be rounded to four decimal places. The amount of the increase for each farm shall be computed by multiplying the respective factor by the total acreage determined for each respective type for each eligible farm. The poundage quota shall be increased in the same proportion that the allotment is increased.

(b) The increase in acreage allotment under this section shall not be considered in establishing future State, county, or farm acreage allotments.

§ 721.12 Determination of effective farm acreage allotment and effective farm poundage quota.

The effective farm acreage allotment and the effective farm poundage quota shall be the farm acreage allotment and farm poundage quota plus or minus any adjustments made according to this Part as a result of transfer, release, reapportionment, undermarketing, increase in allotment for types of peanuts in short supply, and for a violation reduction.

§ 729.13 Increase in farm poundage quota for undermarketings.

The farm poundage shall be increased by the amount of the effective undermarketings. An increase in the farm poundage quota as a result of undermarketings shall not result in an increase in the farm acreage allotment.

§ 729.14 Determination of farm yields.

A farm yield shall be determined for each farm for which a farm acreage allotment has been established.

(a) For each farm (except a farm resulting from a combination which became effective during any of the years 1974 through 1977) on which peanuts were produced during 3 or more of the years 1973–77 the farm yield shall be the average of the three highest actual yields per acre on the farm during the crop years 1973 through 1977.

(b) If peanuts were not produced on the farm (or identifiable tract on a farm which resulted from a combination during the period 1974–77) in at least 3 years of the 5-year period 1973–77, the county committee shall appraise a farm yield (or tract yield, if applicable) based on the farm yield on similar farms and in accordance with instructions issued by the Deputy Administrator.

(c) For each farm which resulted from a combination which became effective during any of the year 1974 through 1977 a tract yield shall be determined for each identifiable tract which was included in the combination farm at the time of the combination. The tract yield shall be established in the same manner as the farm yield for a farm which was not involved in a combination. The farm yield for the farm shall be determined by dividing the sum of the products of the tract yields times the allotment attributable to each respective tract by the farm acreage allotment for the farm.

(d) If there was a substantial change in the operation of the farm (or identifiable tract) during the period 1973–77 (including a change in the farm operator, irrigation practice, or other similar condition) the yield (farm or tract) may be adjusted (upward or downward) based on similar farms and in accordance with instructions issued by the Deputy Administrator.

§ 729.15 Determination of farm yield on a farm reconstituted after farm yields have been established.

For reconstitutions which are effective after farm yields have been established the farm yield shall be determined as follows:

(a) *Combinations.* The farm yield shall be the weighted average of the tract yields for each identifiable tract in the combined farm, based on the peanut allotment attributable to each respective tract and the tract yield for that tract.

(b) *Divisions.* (1) *No identifiable tracts having tract yield established.* The farm yield shall be the same for each tract as the farm yield for the parent farm.

(2) *Identifiable tracts with tract yield established.* The farm yield shall be the same as the tract yield established for the tract which is divided from the parent farm.

(3) *Division of an identifiable tract having a tract yield established.* The farm yield shall be the same as the tract yield for the tract which is being divided.

§ 729.16 Determination of preliminary farm poundage quota and farm poundage quota.

For each farm for which a farm acreage allotment has been determined the county committee shall determine a preliminary farm poundage quota and farm poundage quota. The preliminary farm poundage quota shall be determined by multiplying the farm acreage allotment by the farm yield as determined under § 729.14. The farm poundage quota shall be determined by multiplying the preliminary farm poundage quota by the national quota factor.

§ 729.17 New farm allotment.

(a) *Conditions of eligibility for new farm allotment.* A new farm peanut allotment may be established if each of the following conditions are met:

(1) *Written application.* A written application for a new farm allotment must be filed by the farm operator at the office of the county committee where the farm is administratively located. The application must be filed on or before February 15 of the current crop year.

(2) *Operator requirements.* (i) The operator shall be the solo owner of the entire farm except that the operator's spouse may be an owner, or joint owner with the operator of all or part of the farm.

(ii) Neither the farm operator nor the operator's spouse, if the spouse has ownership interest in the farm for which the application is filed, shall own, have any ownership interest in, or operate any other farm in the United States for which a peanut allotment is established for the current year.

(iii) The operator must own or have readily available adequate equipment and any other facilities of production (including irrigation water in irrigation areas) necessary to the production of peanuts on the farm.

(iv) Except as provided in subparagraph (c), the operator and the operator's spouse must satisfy the county committee that they expect to obtain during the current year more than 50 percent of their income from the production of agricultural commodities or products. If the operator is a partnership, each partner must expect to obtain more than 50 percent of his/her current year income from farming. If the operator is a corporation, it must have no other major corporate purpose other than ownership or operation of the farm(s). Farming must provide its officers and general manager with more than 50 percent of their expected income. Salaries and dividends from the corporation shall be considered as income from farming.

(A) *Income from farming.* Income from farming shall include the estimated return from home gardens, livestock, and livestock products, poultry, or other agricultural products produced for home consumption or other use on the farm(s) excluding the estimated return from the production of the requested new farm allotment.

(B) *Income from nonfarming.* Nonfarming income shall include but shall not be limited to salaries, commissions, pensions, social security payments, and unemployment compensations.

(C) *Special provision for low-income farmers.* The county committee may waive the income provisions in this section provided the county committee determines with concurrence of a State committee representative, that without the new farm allotment the operator and the operator's spouse jointly will not be able to provide a

reasonable standard of living for their family.

(v) The operator must have had experience in producing, harvesting, and marketing peanuts. The experience must have been as a sharecropper, tenant, or farm operator (bona fide peanut production experience gained by a person as a member of a partnership shall be accepted as experience gained in meeting this requirement) during at least 2 of the 5 years immediately preceding the current year. If the operator was in the armed services during the 5-year period, the period shall be extended 1 year for each year of military service during the 5-year period. The experience must have been on a farm having an effective peanut allotment during each year for which experience is claimed.

(3) *Farm requirements.* The farm:

(i) Must include the type of soil that is suitable for peanut production.

(ii) May not include land from which the entire peanut allotment was permanently transferred by sale or owner within the past five crop years.

(iii) May not include land from which the entire peanut allotment was permanently released within the past three crop years.

(iv) May not include a tract of land which resulted from a division, which became effective during the past three crop years, of a parent farm peanut allotment by the owner designation method pursuant to Part 719 of this chapter.

(v) May not include land which was returned to agricultural production within a period of 3 years from the date the former owner was displaced if the entire peanut allotment for the farm of which the land was a part was pooled pursuant to Part 719 of this chapter.

(b) *Amount of new farm allotments.* The farm allotment for a new farm shall be that acreage which the county committee, with the approval of a representative of the State committee, determines is fair and reasonable for the farm, taking into consideration the peanut-growing experience of the producer(s) on the farm; land, labor and equipment available for the production of peanuts on the farm; crop rotation practices; and soil and other physical factors affecting the production of peanuts. The farm allotment established for a new farm shall not exceed the smaller of 10 acres or 25 percent of the cropland on the farm without prior approval of the Deputy Administrator.

(c) *Reduction of new farm allotment.* The allotment determined under this subpart for a new farm shall be reduced to the sum of the peanut acreage planted and the acreage prevented from being planted to peanuts due to a natural disaster on the farm when it is found that the sum of the planted and prevented planted acreage is less than 75 percent of the results obtained by multiplying the new farm allotment times the national quota factor.

(d) *Cancellation of new farm allotment.*—(1) Any new farm allotment established and any history acreage credit shall be void as of the date the new farm allotment was issued if the State committee determines that the applicant knowingly furnished false, incomplete or inaccurate information to obtain the allotment.

(2) Any new farm allotment established, where incomplete or inaccurate information was unknowingly furnished by the applicant and so determined by the county committee shall be void for the next crop year. However, the cancellation shall not be applicable to the current year or the prior years.

(e) *Farm poundage quota for a new farm.* The county committee shall determine a farm poundage quota for each year farm for which an allotment has been established as follows:

(1) A farm yield determined under 729.14 shall be multiplied by the established new farm allotment to obtain the preliminary farm poundage quota.

(2) The new preliminary farm poundage quota shall be multiplied by the national quota factor to obtain the farm poundage quota for the new farm.

§ 729.23 Approval of allotment and farm poundage quota and notice to farm operator.

(a) *Approval.* Each farm acreage allotment, farm yield, preliminary farm poundage quota and farm poundage quota shall be determined under the supervision of and approved by the county committee of the county in which the farm is administratively located, subject to concurrence of the State committee or a representative of the State committee. The initial notice of an acreage allotment and poundage quota shall not be mailed to a farm operator until the allotment and poundage quota has been approved. A revised notice may be mailed without prior approval in any case resulting from: (1) A farm reconstitution that does not require allocation of additional acreage or poundage quota; (2) release and reapportionment of poundage quota; (3) an increase of allotment for type; (4) lease and transfer of poundage quota; or (5) allotment reduction due solely to failure to return marketing card(s) or otherwise furnish a satisfactory report of disposition of peanuts.

(b) *Notice to farm operator.*—(1) As soon as possible after the farm acreage allotment and poundage quota is approved, an official notice of the effective farm acreage allotment and the effective farm poundage quota shall be mailed to the farm operator.

(2) If application for a new farm peanut allotment is disapproved by the county committee because the eligibility requirements for a new farm allotment have not been met, the county committee shall mail to the farm operator a notice of "None" as the farm allotment.

(3) If an old peanut farm loses eligibility for an old farm peanut allotment as for the current year, the county committee shall mail to the farm operator a notice of "None" as the farm allotment and poundage quota. The notice must show the reason why a farm allotment and poundage quota was not established for the farm.

(4) A revised notice of farm allotment and poundage quota shall be mailed to the farm operator as soon as possible after the county committee determines that an incorrect notice has been mailed or the county committee takes an action (approves lease, reconstitution, etc.) which requires a revision of the previously determined allotment and poundage quota.

(5) The notice to the operator shall constitute notice to all persons who as operator, landlord, tenant, or sharecropper are interested in the farm for which the allotment is established.

(6) Insofar as possible and practical, all notices shall be mailed in time to be received prior to the date of any peanut marketing quota referendum.

(7) A copy of each notice or a printout summary of the data from each notice shall be displayed for 30 days in the county office and shall thereafter remain available for public inspection.

(8) Upon request, a certified copy of the notice shall be furnished without charge to any person who has an interest in peanuts on the farm as an operator, landlord, tenant, or sharecropper in the year for which the notice is issued.

§ 729.24 Erroneous notice of allotment and poundage quota.

(a) *Allotment erroneous notice.* If the official notice of the farm acreage allotment and poundage quota issued for any farm erroneously stated an acreage allotment larger than the correct effective farm acreage allotment, the acreage allotment shown on the erroneous notice shall be used as the peanut acreage allotment for the farm for the current marketing year only, if the county committee determines (with the approval of the State Executive Director) that (1) the error was not so gross as to place the operator on notice thereof, and (2) the operator, relying upon such notice and acting in good faith (i) materially changes his position to enable him to produce the allotment crop (for example obligated expenditures of funds for land preparation, additional equipment and labor) and (ii) has planted

an acreage of peanuts in excess of the correct effective farm acreage allotment.

(b) *Poundage quota erroneous notice.* If the official notice of acreage allotment and poundage quota issued for a farm erroneously stated a poundage quota larger than the correct effective farm poundage quota, the poundage quota shown on the erroneous notice shall be used as the poundage quota and the basis for marketing penalty computation for the farm for the current marketing year only, if the county committee determines (with approval of the State Executive Director) that (1) the error was not so gross as to place the operator on notice thereof, and (2) that the operator was not notified of the correct farm poundage quota prior to marketing peanuts as quota peanuts in excess of the correct farm poundage quota. Undermarketings for farms for which the erroneous notice of poundage quota is applied shall be determined on the basis of the correct effective farm poundage quota for the farm.

(c) *Notice of excess and penalty.* The county committee shall mail to the farm operator a written notice of excess acreage for any farm with excess peanut acreage. Such notice shall contain a brief statement of the procedure whereby application for review of the marketing quota may be made under Section 363 of the Act. The notice shall bear the actual or facsimile signature of a member of the county committee. The facsimile signature may be affixed by the county committeemen or an employee of the county office. A copy of each notice containing a notation thereon of the date of mailing the notice to the operator of the farm shall be kept among the permanent records of the county committee, and upon request, a copy, certified as true and correct shall be furnished without charge to any person who as operator, landlord, tenant, or sharecropper, is interested in the peanuts produced in the current year on the farm for which the notice is given.

§ 729.25 Application for review.

Any producer who is dissatisfied with the farm acreage allotment and farm poundage quota established for his new farm may, within 15 days after mailing of the official notice of the farm acreage allotment and poundage quota, file application in writing with the county ASCS office to have such allotment and quota reviewed by a review committee. The procedure governing the review of the farm acreage allotments and marketing quotas is contained in Part 711 of this chapter, which is available at the county ASCS office.

TRANSFERS AND RELEASE AND REAPPORTIONMENT

§ 729.30 Terms and conditions applicable to transfers under Section 358a of the Act.

(a) *Persons eligible to file a record of transfer*—(1) *Sale or lease.* The owner and operator of any farm having an old farm peanut allotment and poundage quota in the current year is eligible to file a record of transfer for sale or lease of all or any part of the farm poundage quota to any other owner or operator of a farm in the same county. The receiving farm need not be an old farm. If the owner(s) and operator of the farm from which the transfer by sale or lease is to be made are different persons, each shall execute the record of transfer; however, only the owner(s) or operator of the receiving farm is required to sign the transfer. A county committee member or employee must witness the signature of either the owner or operator of the transferring farm and the owner or operator of the receiving farm. If such signatures cannot be witnessed in the county office where the farm is administratively located, they may be witnessed in any county office convenient to the owner or operator's residence. The requirement that signatures be witnessed for producers who are ill, infirm, reside in distant areas, or are in similar hardship situations or may be unduly inconvenienced may be waived provided the county office mails Form ASCS-375 for the required signature. In the case of a transfer by sale, such request must be accompanied by a statement signed by all parties to the transaction confirming that the sale has been made.

(2) *By owner.* The owner of any farm having an old farm peanut allotment and poundage quota in the current year is eligible to file a record of transfer to transfer the farm poundage quota from the farm to another farm in the same county owned or controlled by the owner. The county committee may approve a temporary transfer to a farm controlled but not owned by the applicant only if the applicant will be the operator of the farm to which transfer is to be made for each of the years for which the transfer is requested. If the county committee determines that the applicant, due to conditions beyond his control, is prevented from remaining the operator of a farm to which an owner transfer has been approved, the transfer may remain in effect for the period specified at the time the transfer was filed. Conditions beyond the owner's control shall include, but are not limited to death, illness, incompetency, or bankruptcy.

(b) *Filing record of transfer.* Form ASCS-375 "Record of Transfer of Allotment or Quota" shall be filed on or before November 30 of the current crop year with the county committee of the county where the farm is administratively located. The State committee may authorize the acceptance of a late-filed record if it determines that the record was not filed timely due to reasons beyond the control of the owner and operator of the transferring farm.

(c) *Maximum period of transfer by lease or by owner on a temporary basis.* A record of transfer by lease, or by owner on a temporary basis, shall not be for a period exceeding 5 years.

(d) *Farm poundage quota basis for transfer.* Transfers shall be effected by transfer of farm poundage quota. Transfer of farm poundage quota will result in adjustment in the farm acreage allotment on the basis of the farm yields for the transferring and receiving farms respectively. The adjusted acreage shall be determined by multiplying the farm poundage quota transferred by the reciprocal of the national quota factor (1.0+the national quota factor) and dividing the results by (1) the farm yield for the transferring farm to determine the reduction in acreage for the transferring farm, and (2) the farm yield for the receiving farm to determine the acreage to add to the receiving farm.

(e) *Productivity acreage.* When the poundage quota is transferred by sale or by permanent owner transfer, the productivity pool shall be increased or decreased to reflect the algebraic differencce obtained by subtracting the acreage added to the receiving farm from the acreage deducted from the transferring farm.

(f) *Adjustment in national or State allotment.* The adjustment made in any peanut allotment because of the transfer of a higher or lower producing farm shall not reduce or increase the size of any future national or State allotment.

(g) *Transfer not to be approved.* The county committee shall not approve a transfer:

(1) If after approval the total increase in the farm peanut allotment from transfers in prior years and in the current year will exceed 50 acres, except that this limitation shall not apply to approval of a transfer filed after June 14.

(2) Of reapportioned poundage quota.

(3) Of poundage quota which resulted from undermarketings.

(4) Of poundage quota which result from approval of a new farm allotment in the current year.

(5) Of poundage quota by sale if allotment or poundage quota was transferred to the farm by sale within the three preceding crop years.

(6) If after approval the difference between the effective poundage quota and the effective preliminary pound-

age quota is less than the pounds of peanuts previously contracted under the provisions of Part 1446 of this title.

(h) *Transfer of pooled allotments.* Poundage quotas established for a farm as pooled poundage quotas under Part 719 of this chapter may be transferred:

(1) On a permanent basis during the 3-year life of the pooled poundage quota, or

(2) On a temporary basis for a term of years not to exceed the remaining number of crop years of such 3-year period.

(i) *Consent of lienholder.* A transfer of poundage quota from a farm which the county committee has been informed is subject to a mortgage or other lien shall not be approved unless the transfer is agreed to in writing by the lienholder.

(j) *Transfers to and from a farm.* (1) *Transfer filed on or before June 14.* The county committee shall not approve a transfer which is filed on or before June 14 of the current year if approval would result in a transfer both to and from the farm during the period ending on June 14 of the same crop year; *Provided,* That a transfer may be approved if a poundage quota is transferred temporarily from a farm for 1 or more years (and the transfer remains in effect) and the farm is subsequently combined with another farm that is otherwise eligible to receive poundage quota by transfer.

(2) *Transfer filed after June 14.* A temporary transfer of poundage quota either to or from the same farm (but not both) may be approved by the county committee if filed after June 14, even though a transfer which was filed before June 15 is in effect for the farm. Approval shall:

(i) Be limited to 1 year.

(ii) Not be made unless the planted acreage of peanuts on the transferring farm is equal to or greater than an acreage equal to 75 percent of results obtained when multiplying the national quota factor times the farm acreage allotment in effect at the time the farm operator filed a report of the planted acreage of peanuts for the current year.

(iii) Not be made if the poundage quota to be transferred is more than will be required, based on an estimate by the operator of the receiving farm and subject to concurrence of the county committee, to market as quota peanuts the entire production of peanuts from the farm in the current year.

(iv) Be subject to other provisions in this section except for the acreage limitation in paragraph (g).

(v) Not be made by the county committee before August 16 of the current crop year.

(k) *Effect of transfer on acreage history.* (1) *Permanent transfer.* The acreage history for both the transferring farm and the receiving farm shall be adjusted for the current year and for the 2 preceding years to reflect the applicable increase or decrease in the allotment which resulted from the transfer.

(2) *Temporary transfer.* An acreage equal to the decrease in allotment as a result of a temporary transfer of poundage quota shall be considered to have been planted on the farm from which the poundage quota was transferred. The increase in allotment resulting from a temporary transfer of poundage quota to a farm shall have no effect on acreage history for the farm.

(l) *Effect of transfer filed after peanut acreage reported or after a violation occurs.* The effective farm acreage allotment and effective farm poundage quota for a farm prior to approval of a transfer shall be used in determining:

(1) Eligibility of a farm for price support if the transfer agreement was filed after the farm operator reported the acreage of peanuts on the farm; or

(2) The percentage of reduction in a farm acreage allotment for a violation of the regulations in this subpart if the violation occurs before approval of the transfer.

(m) *Farm in violation.* If consideration is pending of a violation which may result in an allotment reduction for the current year on the transferring farm, the county committee shall delay approval of the transfer until action on the violation has been completed or a determination has been made that an allotment reduction cannot be made in the current crop year. If an allotment reduction is to be made in the next year's allotment, a transfer by lease shall be limited to one year. The county committee shall delay an allotment reduction until the next year if the committee has approved a transfer from the farm and the effective allotment after the transfer is less than the amount of the allotment reduction.

(n) *Acreage apportioned to farms for types in short supply.* Poundage quota resulting from acreage apportioned to farms for types in short supply pursuant to § 729.11 shall not be transferred by sale or by owner on a permanent basis but such poundage may be transferred by lease or by owner for the current year only.

(o) *County committee action*—(1) *Approval of transfers.* The county committee shall approve a transfer of poundage quota only if it determines that a timely filed record has been received and that the transfer complies with the requirements of this section. A transfer shall not be effective until approved by the county committee. The county committee may delegate authority to the county executive director and to other county office employees to approve transfers of poundage quotas.

(2) *Notice of revised allotments.* A revised notice of farm allotment and poundage quota must be issued for each farm affected by the transfer of allotment and poundage quota.

(3) *Cancellation of transfer.* A transfer approved on the basis of incorrect information furnished by the parties to the transfer agreement or approved due to error by the county committee shall be cancelled as of the date of approval. However, the cancellation shall not be effective for the current marketing year if:

(i) The transfer approval was made on the basis of incorrect information unknowingly furnished in good faith by the parties to the transfer agreement or the transfer approval was made in error by the county committee, and

(ii) The parties to the transfer agreement were not notified of the cancellation prior to planting of the crop.

Where cancellation of a transfer is required, the county committee shall issue revised notices of allotment and poundage quota showing the reasons for cancellation.

(p) *Withdrawal or minor revisions.* Where the county committee determines that it is clearly in the best interest of all the producers and that effective operation of the program will not be impaired, the county committee may permit withdrawal or minor revisions of transfers upon written request by all parties to the transfer; *Provided,* That (i) temporary transfers may be withdrawn or revised before peanuts are planted during any year of the agreement, and (ii) permanent transfers may be withdrawn or revised before peanuts are planted and only during the first year of the agreement.

(q) *Zero allotment farms.* If the basic allotment for a farm for the current crop year is reduced to zero for a violation of the peanut marketing quota regulations, no allotment may be transferred to the farm for the current crop year.

(r) *Recomputation of previously approved multiple year transfer.* For a multiple year transfer approved after 1977, annually recompute the transfer by limiting the poundage quota transferred to the smaller of (i) the poundage quota initially transferred, or (ii) the farm poundage quota for the transferring farm. The acres for the transferring and for the receiving farm shall be determined in the same manner as the acres for annual transfer are determined as provided in this Part.

(s) *Amendment of multiple year transfer agreements filed on or before December 31, 1977.* Notwithstanding any other provision in this section, a multiple year temporary transfer ap-

proved before 1978 shall not be effective after 1977 unless an amended ASCS-375 is filed. The county committee shall notify the operators of both the transferring farm and the receiving farm of the requirement for filing an amended ASCS-375 in order for the previously filed transfer agreement to remain in effect. The amended ASCS-375 must be filed at the county ASCS office within 20 days from date of notification by the county committee that an amended transfer agreement is required. The amended agreement shall be on the basis of farm poundage quota and shall be agreed upon and signed by each person whose signature is required under the terms and conditions in paragraph (a) of this section.

§ 729.31 Transfer of peanut farm acreage allotment for farms affected by a natural disaster.

(a) *Designation of counties affected by a natural disaster.* The State committee shall determine those counties affected by a natural disaster (including but not limited to hurricane, rain, flash flood, hail, drought, and any other severe weather) which prevents the timely planting or replanting of any of the peanut acreage allotment for any farm in the county. The county committee of each county affected by the determination shall publicize the determination.

(b) *Application for transfer.* The owner or operator of a farm in a county designated for any year under paragraph (a) of this section may file a written application for transfer of peanut acreage within the farm peanut allotment for such year to another farm in the same county or in an adjoining county in the same or adjoining State if such acreage cannot be timely planted or replanted because of the natural disaster. The transfer of the peanut allotment shall also have the effect of transferring the poundage quota. The application shall be filed with the county committee for the county in which the farm affected by such disaster is located. If the application involves a transfer to an adjoining county, the county committee for the adjoining county shall be consulted before action is taken by the county committee receiving the application.

(c) *Amount of transfer.* The acreage to be transferred shall not exceed the farm allotment established under this Part less such acreage planted to peanuts and not destroyed by the natural disaster.

(d) *County committee approval.* The county committee shall approve the transfer of such peanut acreage if it finds that:

(1) Such acreage on the transferring farm could not be timely planted or replanted because of the natural disaster; and

(2) One or more of the producers of peanuts on the transferring farm will be a bona fide producer engaged in the production of peanuts on the receiving farm and will share in the proceeds of the peanuts.

(e) *Cancellation of transfers.* If a transfer is approved under this section and it is later determined that the conditions in paragraph (d) of this section have not been met, the county committee, State committee, or the Deputy Administrator may cancel such transfer. Action by the county committee to cancel a transfer shall be subject to the approval of the State committee or its representative.

(f) *Acreage history credits and eligibility as an old peanut farm.* Any acreage transferred under this paragraph shall be considered for the purpose of determining future allotments to have been planted to peanuts on the farm from which such allotment is transferred.

(g) *Closing dates.* The application for transfer shall be filed with the county committee on or before June 14 of the current year unless the county committee with concurrence of a State committee representative determines that the failure to file the application by June 14 was the result of conditions beyond the control of the applicant.

§ 729.32 Release and reapportionment.

(a) Release and reapportionment shall be effected by release and reapportionment of farm poundage quota. Release and reapportionment of farm poundage quota will result in a decrease (release) or increase (reapportionment) in the acreage allotment on the basis of the farm yield for the respective farm. The released acreage will be determined by multiplying the released poundage quota by the reciprocal of the national quota factor and dividing the result by the farm yield for the releasing farm. The reapportional acreage will be determined by multiplying the reapportioned poundage quota by the reciprocal of the national quota factor and dividing the results by the farm yield for the farm receiving the reapportioned poundage quota.

(b) *Release of farm poundage quota.* Except as provided in subparagraph (d), the farm operator may release part or all of the farm poundage quota (except quota resulting from undermarketings in a previous year) by filing a written release with the county committee.

(c) *Closing date to release or to request reapportionment.* The State committee shall establish and publicize the closing date(s) for release of the farm acreage allotment and poundage quota for the State or for areas consisting of one or more counties in the State taking into consideration the normal planting date(s) for the State. The closing date for release shall be no later than the date on which planting of peanuts normally becomes general on farms in the State, area or county. The established date(s) also shall be the closing date for filing a request to receive reapportioned poundage quota.

(d) *Signatures required in special cases.* If the entire allotment was released in each of the 2 years preceding the current year, the release of the entire farm poundage quota for the current year shall be signed by both the owner and the operator of the farm. If any part of the preliminary farm poundage quota is permanently released (i.e., for the current year and all subsequent years), the release shall be in writing and signed by both the owner and operator of the farm. The farm poundage quota may not be released (1) from a new farm, (2) for the current year, if the owner of the farm files an objection with the county committee in writing, before a release is filed by the operator, and (3) from the eminent domain pool if an application for transfer from the pool has been filed in accordance with Part 719 of this chapter.

(e) *Reapportionment of farm poundage quota.* A farm shall be eligible to receive reapportionment of released poundage quota only if a written request is filed by the farm owner or operator at the office of the county committee pursuant to this section. The farm poundage quota released pursant to this section may be reapportioned by the county committee to other farms in the same county receiving allotments in amounts determined by the county committee to be fair and reasonable on the basis of land, labor, and equipment available for the production of peanuts; crop-rotation practices; and soil and other physical factors affecting the production of peanuts.

(f) *Closing date for making reapportionment.* Poundage quota released to the county committee may be reapportioned by the county committee to other farms in the county at any time not later than 30 days following the closing date set by the State committee pursuant to this Section for filing a request for an increase in the poundage quota.

(g) *Credit for released or reapportioned poundage quota.* The release of the farm poundage quota for the current year only shall not operate to reduce the allotment or poundage quota for the farm for any subsequent year unless the farm becomes ineligible for an old farm allotment. Any increase in the allotment for a farm resulting from reapportionment of farm poundage quota shall not operate to increase the allotment or poundage quota for such farm for any subsequent year.

(h) *Applicability to a farm aquired by an agency having the right of eminent domain.* During any year of the period the peanut acreage allotment and poundage quota from a farm remains in the allotment pool pursuant to Part 719 of this chapter, the displaced owner may release all or any part of the farm poundage quota to the county committee.

(i) *No reapportionment of released quota to zero allotment farm.* Poundage quota may not be reapportioned to a farm on which the basic allotment for the current crop year is reduced to zero for a violation of the peanut marketing quota regulations.

MARKETING CARDS AND PRODUCER IDENTIFICATION CARDS

§ 729.42 Issuance of cards.

(a) *Issuance of marketing cards.* A marketing card (MQ-76) shall be issued in the name of the farm operator for each farm on which peanuts are produced in the current year for use by each producer on the farm for marketing his/her share of peanuts produced except that (i) a card issued for experimental peanuts shall be issued in the name of the experiment station, and (ii) a card issued to a successor-in-interest shall be issued in the name of the successor-in-interest. The face of the marketing card may show the name of other interested producers.

(b) *Issuance of producer identification cards.* A producer identification card shall be issued in the same name that is entered on the marketing card(s) for each eligible farm. The producer identification card will be used to identify the farm on which the peanuts were produced and the card must accompany each lot of peanuts when offered for sale. Producer identification cards shall be issued at the time marketing cards are issued.

(c) *Person authorized to issue cards.* The county executive director shall be responsible for the issuance of marketing cards and producer identification cards.

(d) *Rights of producers and successors-in-interest.* (1) Each producer having a share in the peanuts available for marketing from a farm shall be entitled to the use of the marketing and identification cards for marketing his/her proportionate share of the peanuts produced on the farm.

(2) Any person who succeeds, in whole or in part to the share of a producer in the peanuts available for marketing from a farm, shall, to the extent of such succession, have the same rights to the use of the marketing and identification cards and bear the same liability for penalties as the original producer.

(e) *Data entered on marketing card and supplemental card.* (1) Before issuance the following data and information must be entered on the marketing card in the spaces provided: (a) Effective farm poundage quota; (b) if applicable, the pounds of peanuts contracted and the handler number of the contracting handler; and (c) converted penalty rate, if applicable.

(2) A supplemental marketing card bearing the same name identification as shown on the original marketing card may be issued for a farm upon return to the county office of an original marketing card or a supplemental marketing card. The balance of the poundage quota from the returned marketing card shall be entered as the effective farm poundage quota on the supplemental card.

(3) Two or more marketing cards may be issued for a farm if the farm operator specifies in writing the poundage quota (not to exceed the balance of poundage quota available) to be assigned to each card.

(4) Other data specified in instructions issued by the Deputy Administrator shall be entered on the marketing card.

(f) *Data on producer identification cards.* (1) The identification card issued in the name of the farm operator shall be embossed to show the (i) name and address of the farm operator and the (ii) State, county code and farm serial number. If an embossed identification card is not available the above information shall be entered by the county ASCS office.

(2) A farm operator may receive as many identification cards as may be needed at any one time to accompany each lot of peanuts offered for sale until such times as the peanuts are inspected and MQ-94 has been executed by the inspection service.

(3) After the identification card is returned to the operator it may be used again to identify another lot of peanuts.

(g) *Replacing a lost, stolen, or destroyed marketing card.* A new marketing card shall be issued to replace a card which has been determined by the county executive director who issued the card to have been lost, destroyed, or stolen provided the farm operator gives immediate written notice of such fact and furnishes a satisfactory report of the quantity of peanuts marketed through use of the lost, stolen, or destroyed marketing card.

§ 729.43 Claim stamping marketing cards.

If a person is indebted to the United States and the indebtedness is listed on the county debt record any marketing card issued for the farm on which the person has a producer interest shall bear the notation "U.S. Claim" followed by the amount of the indebtedness. The name of the indebted producer, if different from the farm operator, shall be recorded directly under the claim notation. A notation showing "PMQ" (peanut marketing quota) as the type of indebtedness shall constitute notice to any peanut buyer that until the amount of penalty and accrued interest is paid, the United States has a lien on the crop of peanuts with respect to which the penalty was incurred and on any subsequent crop of peanuts subject to marketing quotas in which the person liable for payment of the penalty has an interest. A claim notation other than "PMQ" shall constitute notice to any peanut buyer that subject to prior liens the net proceeds, to the extent of the indebtedness shown, from any price support loan or purchase settlement due the debtor must be paid to the "Agricultural Stabilization and Conservation Service, USDA". The acceptance and use of a marketing card bearing a notation and information concerning indebtedness to the United States shall not constitute a waiver by the indebted producer of any right to contest the validity of such indebtedness by appropriate administrative appeal or legal action. A claim free marketing card shall be issued when the claim has been paid.

§ 729.44 Invalid cards.

(a) *Reasons for being invalid.* A marketing card shall be invalid under any one of the following conditions:

(1) It is not issued or delivered in the form and manner prescribed.

(2) Any entry is omitted or is incorrect.

(3) It is lost, destroyed, stolen, or becomes illegible.

(4) An erasure or alteration has been made and not initialed by the county executive director.

(b) *Validating invalid cards.* If a marketing card is invalid because an entry is not made as required, the farm operator or other producer shall return the marketing card to the county office. Except for an incorrect entry of converted penalty rate the marketing card may be made valid be entering data previously omitted or by correcting any incorrect data previously entered. The county executive director shall initial each correction made on the marketing card. An invalid card, if not validated, shall be canceled and a replacement card shall be issued.

§ 729.45 Misuse of marketing card.

Any information which causes a member of a State, county, or community committee, or an employee of the State or county office to believe that a marketing card is being misued pursuant to this subpart shall be reported immediately by such person to the county or State office.

Signed at Washington, D.C., on March 28, 1978.

S. N. SMITH,
Acting Administrator, Agricultural Stabilization and conservation Service.

[FR Doc. 78-8779 Filed 4-3-78; 8:45 am]

[3410-05]

Commodity Credit Corporation

[7 CFR Part 1446]

[CCC Warehouse Stored Peanut Price Support Regs.]

PEANUTS

General Regulations Governing 1978 and Subsequent Crops Peanut Warehouse Storage Loans and Handler Operations

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: These proposed regulations provide the terms and conditions under which producers, acting through their associations, may receive price support on their eligible peanuts through warehouse storage loans for 1978 and subsequent crops. Peanut producers and handlers may market peanuts in accordance with the provisions of title VIII of the Food and Agriculture Act of 1977. This proposed revision is necessary in order to implement the new program.

DATE: Comments must be received before May 4, 1978.

ADDRESS: Send comments to the Director, Price Support and Loan Division, ASCS, U.S. Department of Agriculture, 3741 South Building, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT:

Dalton J. Ustynik, ASCS 202-447-6611.

SUPPLEMENTARY INFORMATION: The Commodity Credit Corporation (CCC) is inviting comments on the proposed revision of the regulations. All written submissions will be available for public inspection at the Office of the Director, Price Support and Loan Division, Room 3741, South Building, 14th and Independence Avenue SW., during regular business hours (7 CFR 1.27(b)).

PROPOSED RULE

It is proposed to amend 7 CFR 1446.1-1446.16, to read as follows:

Subpart—General Regulations Governing 1978 and Subsequent Crops Peanut Warehouse Storage Loans

Sec.

AUTHORITY: Secs. 4 and 5, 62 Stat. 1070, as amended (15 U.S.C. 714 b and c); secs. 101, 401, 63 Stat. 1051, as amended (7 U.S.C 1441, 1421); and sec. 807, 91 Stat. 947 (7 U.S.C. 1445c).

§ 1446.1 General statement.

(a) *Scope.* This subpart sets forth conditions under which producers and handlers may trade in 1978 and subsequent crop(s) peanuts. This subpart also sets forth the terms and conditions under which eligible producers, acting collectively through specified marketing associations (referred to severally in this subpart as "the association"), may obtain price support on their 1978 an subsequent crop farmers stock peanuts. Eligible farmers stock peanuts produced by eligible producers which are quota peanuts shall be eligible at the quota support rate. Farmers stock peanuts which are not quota peanuts shall be eligible for price support at the additional support rate. Annual supplements to this subpart will specify support prices, the associations through which producers may obtain price support, and other terms and conditions not contained in this subpart applicable to the warehouse storage loan program for peanuts of a particular crop.

(b) *Price support advances.* Producers may obtain price support loans at the rates specified and through the association specified (for the Southeastern Southwestern, and Virginia-Carolina areas respectively), in the applicable annual supplement. Each association will make appropriate loan advances on peanuts delivered to it by producers at warehouses operating under peanut receiving and warehouse contracts with the association. CCC will make a loan (referred to in this subpart as a "warehouse storage loan") to the association. Such loan will be secured by peanuts received by the association.

(c) *Farm storage loans and purchases from producers.* Regulations containing the terms and conditions under which CCC will make farm storage loans directly to producers and purchases directly from producers on any crop farmers stock peanuts will be published separately in the FEDERAL REGISTER. Such loans and purchases shall be made only on quota peanuts.

§ 1446.2 Administration.

(a) *Responsibility.* Under the general direction and supervision of the Executive Vice President, CCC, the Producer Association Division, Agricultural Stabilization and Conservation Service (referred to in this subpart as "ASCS") will administer this subpart.

(b) *Limitation of authority.* State and county committees or their employees and the associations have no authority to modify or waive any of the provisions of this subpart or any amendments or supplements thereto.

(c) *Supervisory authority.* No delegation of authority in this subpart shall preclude the Executive Vice President, CCC, or the Executive Vice President's designee from determining any questions arising under the regulations or from reversing or modifying any determination made pursuant to such delegation.

§ 1446.3 Definitions.

As used in this subpart, and in instructions and documents in connection herewith, the words and phrases defined in this section shall have meanings herein assigned to them unless the content or subject matter otherwise requires.

(a) *Additional peanuts.* Any peanuts which are marketed from a farm other than peanuts marketed or considered marketed as quota peanuts.

(b) *Additional support rate.* The support rate published in annual crop supplements applicable to additional peanuts.

(c) *ASCS.* The Agricultural Stabilization and and Conservation Service of the U.S. Department of Agriculture.

(d) *Association.* An area marketing association which is operated primarily for the purpose of conducting loan activities and which is selected and approved for such activities by the Secretary.

(e) *CCC.* The Commodity Credit Corporation, an agency and instrumentality of the United States within the Department of Agriculture.

(f) *Compliance regulations.* The Regulations Governing Acreage and Compliance Determinations for Farm Marketing Quotas, Acreage, Allotments, and Related ASCS Programs, as amended, issued by the Administrator, ASCS, and effective for the applicable crop, part 718 of this title.

(g) *Contract additional peanuts.* Additional peanuts for crushing or exporting, or both, on which a contract has been entered into between a handler and producer in accordance with § 1446.5.

(h) *County committee.* Persons elected within a county as the county committee under the regulations governing the selection and function of Agricultural Stabilization and Conservation county and community committees in part 7 of subtitle A of this section, except that for Puerto Rico and the Virgin Islands, the Carribbean area Agricultural Stabilization and Conservation committee shall insofar as applicable, perform the functions of the county committee.

(i) *County office.* The office of the county ASC committee where records for the farm are kept.

(j) *Domestic edible use.* Use for milling to produce domestic food products or seed and use on the farm.

(k) *Effective farm allotment.* The effective farm peanut acreage allotment for the applicable crop of peanuts, as defined in the peanut marketing quota regulations, part 729 of this title.

(l) *Effective farm poundage quota.* The effective farm poundage quota for the applicable crop of peanuts as defined in the marketing quota regulations; part 729 of this title.

(m) *Extra large kernels.* Shelled Virginia type peanuts which are "whole" and free from "minor defects" and "damage" as such terms are defined in the U.S. Standards for Shelled Virginia type peanuts effective on the date of inspection and which will not pass through a screen having 21.5/64 by 1 inch openings.

(n) *Excess peanuts.* The quantity of peanuts marketed or considered marketed which were produced on an acreage in excess of the producer's effective farm allotment.

(o) *Farm.* A farm, as defined in the Regulations Governing Reconstitution of Farm, Allotments, and Bases, part 719 of this title, which in general define a farm as all farmland which is operated by one person.

(p) *Farmers stock peanuts.* Picked or threshed peanuts produced in the United States which have not been shelled, crushed, cleaned, or otherwise changed (except for removal of foreign material, loose shelled kernels, and excess moisture) from the condition in which picked or threshed peanuts are customarily marketed by producers.

(q) *Final acreage.* The acreage on the farm from which peanuts are picked or threshed as determined and adjusted under part 718 of the chapter.

(r) *Form MQ-94.* Inspection Certificate and Sales Memorandum for farmers stock peanuts.

(s) *Handler.* Any person or firm who acquires peanuts through a business of buying, shelling, or drying peanuts.

(t) *Inspector.* A Federal-State inspector authorized or licensed by the Secretary, U.S. Department of Agriculture.

(u) *Lot.* That quantity of farmers stock peanuts for which one Form MQ-94 or other inspection certificate is issued. In the case of farmers stock peanuts delivered to the association for a loan advance, a lot shall consist of not more than the content of one vehicle or approximately 24,000 pounds when delivered by more than one vehicle.

(v) *Marketing cards.* Forms MQ-76 issued each year according to Part 729 of this title by ASCS county offices to growers for use in marketing peanuts of the applicable crop. Each Form MQ-76 shall indicate the farm operator's eligibility for quota price support and the pounds that may be marketed as quota peanuts and contract additional peanuts.

(w) *Marketing quota penalties.* The penalties prescribed in the marketing quota regulations, Part 729 of this title, which shall be computed and collected in accordance with those regulations.

(x) *Marketing quota regulations.* The Allotment and Marketing Quota Regulations for Peanuts of the 1978 and Subsequent Crops, as amended, issued by the Administrator, ASCS, Part 729 of this title.

(y) *Marketing year.* The period beginning on August 1 of the year in which the peanuts of the applicable crop are planted and ending on July 31 of the following year.

(z) *Net weight.* That weight of farmers stock peanuts obtained by deducting from the gross scale weight of the peanuts (1) foreign material, and (2) moisture in excess of 7 percent in the Southwestern and Southeastern areas, and 8 percent in the Virginia-Carolina area.

(aa) *Edible export standards.* (1) Cleaned inshell peanuts milled from farmers stock peanuts must be within the requirements for U.S. Jumbo or U.S. Fancy grades, or Runner Fancy or Spanish Fancy grades, as defined by the Peanut Marketing Agreement.

(2) Shelled peanuts, of any type, must grade U.S. Splits or U.S. No. 1 or better or 'With Splits' grades as defined in Marketing Agreement for Peanuts No. 146.

Peanuts shown by the applicable Federal-State Inspection Certificate to deviate from the requirements of this subparagraph (aa) may be exported if: (i) The purchaser established that such deviations are acceptable to the export buyer, and

(ii) The exportation of such peanuts is approved by the Association.

(3) All peanuts shall meet the standards with respect to aflatoxin established by the Marketing Agreement Regulating the Quality of Domestically Produced Peanuts. Compliance with such standards shall be determined on the basis of analysis of samples of such peanuts performed at the handler's expense by a laboratory authorized to issue USDA certificates.

(bb) *Eligible country.* Any destination outside the United States, other than any country or area for which a validated export license is required under regulations issued by the Bureau of International Commerce, unless such license for shipment or transhipment thereto has been obtained from the Bureau, except that neither Canada nor Mexico shall be considered an eligible country for the export of peanut products other than treated seed peanuts.

(cc) *Export and exportation.* A shipment of peanuts or peanut products from the United States directed to a destination outside the United States to become part of the mass of goods of the country of destination.

(dd) *Fragmented peanuts.* Peanuts not more than 20 percent of which are whole kernels which will not pass through the following openings, by type: Spanish $^{15}/_{64}$ x $^{3}/_{4}$ inch slot: Runner $^{15}/_{64}$ x $^{3}/_{4}$ inch slot; and Virginia $^{15}/_{64}$ x 1 inch slot.

(ee) *Loan value.* The amount of the loan which may be obtained under these regulations on a lot of eligible farmers stock peanuts computed for quota or additional peanuts, as applicable, on the basis of the weight, quality, and the support values for such type appearing in the applicable crop supplement.

(ff) *Peanut meal.* Any meal, cake, pellets, or other forms of residue remaining in after extraction or expulsion of oil from peanut kernels, but not including pressed peanuts.

(gg) *Peanut receiving and warehouse contract.* Form CCC-1028 Identity Preserved, Form CCC-1028-A, Commingled Storage, or any other form approved by CCC for this purpose.

(hh) *Peanut segregations*—(1) *Segregation 1.* Farmers stock peanuts which (i) have at least 99 percent peanuts of one type, (ii) have not more than 2 percent damaged kernels nor more than 1.00 percent concealed damage caused by rancidity, mold, or decay, nor more than 0.5 percent freeze damage, and (iii) are free from visible Aspergillus flavus mold; (2) *Segregation 2.* Farmers stock peanuts which (i) have less than 99 percent peanuts of one type, or (ii) have more than 2 percent damaged kernels or more than 1.00 percent concealed damage caused by rancidity, mold, or decay, or more than 0.5 percent freeze damage, and (iii) are free from visible Aspergillus flavus mold; (3) *Segregation 3.* Farmers stock peanuts which have visible Aspergillus flavus mold.

(ii) *Pools.* Accounting pools established by the association and on which complete and accurate records are maintained by area, by type, and by segregation for quota peanuts and additional peanuts not under contract.

(jj) *Quota peanuts.* Peanuts which are eligible for domestic edible use and are marketed or considered marketed from a farm as quota peanuts and which are not in excess of the farm poundage quota.

(kk) *Quota support rate.* The support rate published in annual crop supplements applicable to quota peanuts.

(ll) *Sound mature kernels.* Kernels which are free from "damage" and "minor defects" as defined in the U.S. Standards for the applicable type of peanuts effective on the date of the inspection, and which will not pass through screens with the following openings:

Runner Type, 15/64 x ¾ inch slot.
Spanish Type, 15/64 x ¾ inch slot.
Virginia Type, 15/64 x 1 inch slot.

(mm) *Type.* The generally known types of peanuts (i.e., Runner, Spanish, Valencia, and Virginia), as defined in the marketing quota regulations.

(nn) *United States.* The fifty States of the United States, Puerto Rico, the territories and possessions of the United States, and the District of Columbia.

(oo) *United States government agency.* Any corporation wholly owned by the Federal Government, and any department, bureau, administration, or other agency of the Federal Government.

(pp) *Valencia type peanuts produced in the Southwest suitable for cleaning and roasting.* Valencia type peanuts produced in the Southwest containing not more than 25 percent having shells damaged by (1) discoloration, (2) cracks or broken ends, or (3) both.

§ 1446.4 Handler responsibilities.

(a) *Examination of producer's marketing card.* All handlers shall examine producers' marketing cards and record each purchase or delivery of peanuts as required in Part 729 of this title. Any contract additional peanuts delivered in excess of the contract shall be deemed to be quota peanuts. No peanuts shall be handled from any producer who does not present a marketing card and farm identification card at time of delivery.

(b) *Purchase records.* Each handler shall maintain records of each purchase of peanuts. Such records shall identify the seller of the peanuts, the State and county code, and the farm number of the farm on which the peanuts were produced or the registration number of the seller if the seller is a handler and must indicate the quantity, type, date of purchase, and applicable MQ-94 serial number.

(1) *Purchases of quota peanuts from producers on which MQ-94 is not prepared.* The handler shall immediately transmit a record of such purchase to CCC. Such record shall show name and address of producer, State and county code, farm number; handler's name, address and registration number, buying point, any marketing quota penalty collected, quantity, and date of purchase.

(2) *Purchases of quota peanuts between handlers on In-weight In-grade basis.* The purchaser shall immediately transmit a record of such purchase to CCC. Such record shall show name, address and registration number of original handler; buying point, State and county code, name, address, and registration number of purchaser, quantity and date of purchase.

(c) *Sales and disposal records.* Each handler shall maintain records of all sales and other disposals of peanuts. Such records shall show date of sale, quantity, type, to whom sold, whether sold for export or domestic use, whether sold as edible peanuts or for crushing, and any other information required by this subpart.

(d) *Method of keeping records.* Handler records shall be maintained within their operation in such a manner that will enable representatives of the Secretary to readily reconcile the quantities, grades, and qualities of all peanuts acquired by a handler with the quantities, grades, and qualities of all such peanuts disposed of by a handler. Records concerning the acquisition and disposal of contract additional peanuts must also be kept in such a manner that representatives of the Secretary can readily determine compliance with the regulations and contract provisions.

(e) *Retention of records.* All records shall be maintained for a period of three years following the end of the marketing year in which the peanuts were produced.

§ 1446.5 Contracts for additional peanuts for crushing or export.

(a) *Contracts between handlers and producers.* Handlers who have a U.S. address may contract with producers to buy additional peanuts from the producers for crushing or export, or both. The type and quality of each lot of contract peanuts delivered under contract shall be determined by an inspector when such peanuts are received. All such contracts shall be completed and submitted to the county office for approval prior to June 15 of the year in which the crop is produced. Such contracts cannot be sold or traded. The county office shall summarize contracts and send such summary to the association through the State office. The summary shall show State and county code, farm serial number, handler registration number, and number of pounds contracted. Contracts shall include at least the following provisions:

(1) Name and address of operator, State and county code and farm serial number of the farm.

(2) Name, address of handler, and registration number.

(3) Amount of Segregation 1 peanuts in pounds by type, not to exceed the difference between farm base production poundage and the sum of the farm poundage quota and the quantity of additional peanuts covered by prior contracts for additional peanuts.

(4) Contract price shown as a percentage of quota peanut support rate.

(5) Requirement for disclosure by producer of any liens on peanuts on date of delivery.

(6) A provision that the producer shall not be liable for failure to deliver against such contract above the actual production of such type and quality on the farm provided such physical loss of production resulted solely from an external source such as fire, lightning, inherent explosion, windstorm, tornado, flood, or other acts of God.

(7) Signature of farm operator and producer if different than operator.

(8) Signature of handler or authorized agent.

(9) The following agreement by the handler:

"I agree that I will either export or crush the peanuts delivered under this contract by July 31 following the calendar year in which the crop is grown or contract with another handler to export or crush such peanuts by such date, as provided in Part 1446, Subpart—General Regulations Governing 1978 and Subsequent Crops Peanut Warehouse Storage Loans and Handler Operations."

(b) *Contracts between handlers.* Handlers may contract with other handlers to market additional contract peanuts. Such contracts must contain the agreement specified in paragraph (a)(9) of this section and an agreement that such agreement will be included in all subsequent contracts covering resale of such peanuts.

§ 1446.6 Commingling of quota and additional peanuts.

Quota and additional farmers stock peanuts of like type and segregation may be commingled and exchanged on a dollar value basis to facilitate handling and marketing. The dollar value basis shall be determined on the basis of the quota support rate. The handler shall receive, store, and deliver all such peanuts in accordance with good commercial practices and instructions provided by CCC. For each lot of quota and/or additional peanuts stored commingled, the records of the handler shall show at all times the date and place received, name and address of the producer, the type, segregation, pounds, and dollar-value-in. The handler shall keep such other accounts and records and furnish such information and reports relating to the dollar value out and disposition of such peanuts as may be prescribed by the association or CCC.

§ 1446.7 Use of additional peanuts as domestic edible peanuts.

During harvest season, a handler shall have the right to purchase additional peanuts for domestic edible use at buying points owned or controlled by such handler at 100 percent of the quota loan value of such peanuts plus handling charges. Such purchase may be made only from the association and only on the date such peanuts were offered by producers to the association for loan. The handler shall advance to the producer, as an agent for the association, price support at the additional loan level and forward to the association a check payable to CCC for the peanuts at the quota support rate plus handling charges. The check and applicable MQ-94 will identify the peanuts as additional peanuts that may be used as domestic edible peanuts. The association shall credit such receipts to the additional pool for such peanuts. Handlers may also purchase additional peanuts from the loan for domestic edible use after delivery by producers to the association, under terms and conditions announced by CCC. The minimum price for such purchases shall be not less than carrying charges plus (a) 105 percent of the quota loan value if purchased not later than December 31 of the marketing year, or (b) 107 percent of the quota loan value if purchased after December 31 of the marketing year.

§ 1446.8 Compliance by handlers.

All contract additional peanuts acquired by a handler shall be disposed of by domestic crushing or export to an eligible country. All handler's records shall be subject to a review by CCC or other representatives of the Secretary, to determine compliance with the provisions of this subpart. Refusal to make such records available to authorized representatives of the Secretary, failure to dispose of any peanuts by July 31 following the calendar year in which the crop was grown or failure of such records to establish such disposition shall constitute prima facie evidence of non-compliance with this subpart. Reviews shall be made by the association for the respective area in accordance with guidelines established by CCC and the association shall not take any administrative or any other actions concerning indicated program violations until directed to do so by the Director, Producer Associations Division, ASCS.

(a) *Quota peanuts.* A handler will be subject to a penalty for noncompliance if it is determined that he marketed from any crop, for domestic edible use, a larger quantity, or higher grades or quality of peanuts than could reasonably be produced from the quantity of peanuts having the grade, kernel content and quality of quota farmers stock peanuts purchased by the handler for domestic edible use during the applicable marketing year and of those purchased under § 1446.7. In such case, the handler will be obligated to pay a penalty equal to 120 percent of the basic quota support rate on that quantity of farmers stock peanuts determined to be necessary to produce the excess quantity or grade or quality of peanuts sold.

(b) *Method of determining compliance*—(1) *Commingled Storage.* Handlers may commingle quota loan, quota commercial, additional loan and contract additional peanuts. In such instance, quota loan and additional loan peanuts must be inspected as farmers stock peanuts and settled on a dollar value basis less adjustments for shrinkage except that when such peanuts are purchased from the association for domestic edible and related use on an in-grade, in-weight basis. Contract additional peanuts may be inspected on a farmers stock basis and accounted for on a dollar value basis less adjustments for shrinkage except that if the handler elects, the handler may account for such peanuts on a shelled basis. And in such case, the handler must account for all quota commercial and contract additional peanuts by keeping records which will enable CCC to determine the number of pounds and the average total kernel content of all commercial quota peanuts and all contract additional peanuts received and of all dispositions. CCC will supervise the disposition of all such quota and contract additional peanuts. Supervision of quota commercial will consist of a review of records representing such peanuts. Supervision of contract additional peanuts shall be as set forth in § 1446.9. The average total kernel content as shown on all MQ-94's representing purchases of quota, commercial, and contract additional peanuts will be determined separately and compared to total kernel content of plant outturns for both quota commercial and additional contract peanuts. The outturns for additional contract peanuts must be at least equal to the outturns for quota commercial peanuts. In any case, when the outturn for additional peanuts is less than that for quota commercial peanuts, the deficiency shall be converted into pounds and penalty calculatd as specified in paragraph (a) of this section.

(2) *Identity preserved storage.* Contract additional peanuts stored identity preserved shall be inspected as farmers stock peanuts and settled on a dollar value basis. The handler shall receive, store, and otherwise handle such peanuts in accordance with good commercial practices.

§ 1446.9 Supervision and handling of additional contract peanuts.

The association for the respective area shall supervise all domestic handling of contract additional peanuts including storing, shelling, crushing, cleaning, weighing, and shipping.

(a) *Access to facilities.* A handler, when entering into a contract to receive contract additional peanuts, agrees that authorized representative(s) of CCC and the association:

(1) May enter and remain upon any of the premises when such peanuts are being received, shelled, cleaned, bagged, sealed, weighed, graded, stored, crushed, packaged, shipped, or otherwise handled.

(2) May inspect such peanuts and the oil, meal, and other products thereof, and

(3) May inspect the premises, facilities, operations, books, and records to the extent necessary to determine that such peanuts have been handled in accordance with these regulations.

(b) *Notifying the association.* Before moving or processing any peanuts, the handler (or cleaner, sheller, or processor under contract with the handler) shall notify the association of the time such operation will begin and the approximate period of time required to complete the operation. When a plant is not currently under supervision, the handler shall give at least ten working days advance notice to the association so that supervision can be arranged.

(c) *Processing.* The peanuts shall be shelled or otherwise milled, crushed, or shelled and crushed as a continuous operation separate from other peanuts. Shelled peanuts shall be identified with positive lot identity tags before being stored and moved for crushing or export. Except as authorized by the association, positive lot identity shall be maintained when peanuts are transported or stored in the following manner:

(1) *Transportation.* The peanuts shall be transported from the storage location in a covered vehicle, such as a truck or railroad car. The vehicle shall be sealed unless the association determines that identity of the peanuts can be maintained without sealing.

(2) *Storage.* The peanuts shall be stored in separate building(s) or bin(s) which can be sealed or which the association determines will satisfactorily maintain lot identity.

(d) *Expense charged to handlers.* All supervision costs shall be borne by handlers.

(e) *Domestic sale or transfer*—(1) *Farmers stock.* The handler must submit contracts covering any domestic sale, transfer, or other disposition of farmers stock peanuts to the association and obtain written approval prior to any physical movement of the peanuts. Approval of any domestic sale, transfer, or other disposition may be made only if the person to whom the peanuts are sold, transferred, or disposed of agrees, in writing, to handle and crush or export the pea-

nuts in accordance with the terms and conditions of these regulations. The identical peanuts contracted must be shelled and crushed domestically or exported in accordance with this section except that with the prior approval of the association, other farmers stock peanuts may be used to replace the additional peanuts provided such peanuts are of the same crop, type, and quality and from the same area.

(2) *Milled peanuts.* The handler must submit contracts covering any domestic sale, transfer, or other disposition of milled peanuts to the association and obtain written approval prior to any physical movement of the peanuts. Approval of any domestic sale, transfer, or other disposition may be made only if the person to whom the peanuts are sold, transferred, or disposed of agrees, in writing, to handle and crush or export the peanuts in accordance with the terms and conditions of these regulations. The identical peanuts contracted must be crushed domestically or exported in accordance with this section except that with the approval of the association, other peanuts may be used to replace the additional peanuts provided such peanuts are of the same crop, type, and quality, size, and from the same area. The replacement peanuts must be positive lot identified as peanuts to replace additional peanuts and otherwise handled as additional peanuts.

(f) *Disposal of additional contract peanuts.* Contract additional peanuts may be disposed of by domestic crushing or by exporting to an eligible county as follows:

(1) All kernels may be crushed domestically, or

(2) All kernels may be exported for crushing, if fragmented, or

(3) All kernels that are graded to meet the edible export standards may be exported and the remaining kernels:

(i) Crushed domestically, or

(ii) Exported for crushing if peanuts are fragmented, or

(4) All of the peanuts may be exported as farmers stock peanuts, or

(5) Peanuts may be exported as peanut products if such peanuts meet edible export standards, or

(6) Peanuts may be exported as milled or inshell peanuts.

(g) *Disposal of meal contaminated by aflatoxin.* All meal produced from peanuts which are crushed domestically and found to be unsuitable for use as feed because of contamination by aflatoxin shall be disposed of for nonfeed purposes only. If the meal is exported, the export bill of lading shall reflect the analysis of the lot by inclusion thereon of the following statement: "This shipment consists of lots of meal which contain aflatoxin ranging from —— to —— PPB and averaging —— PPB."

(h) *Final dates for domestic crushing and exporting.* Additional contract peanuts shall be scheduled for supervision by the association during the normal marketing period but not later than June 31 following the calendar year in which the crop is grown.

(i) *Export provisions*—(1) *General.* Exports to Southern Rhodesia, North Korea, Vietnam, Cambodia, and Cuba are regulated by U.S. Department of Commerce regulations and require a validated export license. Additional information concerning the regulations may be obtained from the Bureau of Commerce or from the field office of the Department of Commerce.

(2) *Export to a U.S. government agency.* Except for the export of raw peanuts to the military exchange services for processing outside the United States, export of peanuts in any form by or to a United States government agency shall not be considered an export to an eligible country. However, sales to a foreign government which are financed with funds made available by a United States agency such as the Agency of International Development are not considered sales to a United States government agency, provided the peanuts were not purchased by the foreign buyer for transfer to a United States agency.

(3) *Exportation of contract additional peanuts.* All additional contract peanuts which are not crushed domestically and which are eligible for export shall be exported to an eligible country as peanuts or peanut products.

(4) *Reentry—Transshipment and Liquidated Damages.* (i) *Reentry-Transshipment.* Peanuts and peanut products exported shall not be reentered by anyone into the United States in any form or product and shall not be caused by the handler to be diverted or transshiped to other than an eligible country in any form or product, and if they are reentered.

(ii) *Liquidated Damages.* The handler and CCC agree that CCC may incur serious and substantial damages to its program to support the price of quota peanuts if additional contract peanuts are exported and later are reentered into the United States or diverted or transshipped to other than an eligible country in any form or product; that the amount of such damages will be difficult, if not impossible, to ascertain exactly; and that the handler shall, with respect to any peanuts or peanut products reentered into the United States or diverted or transshipped to other than an eligible country, pay to CCC, as liquidated damages and not as a penalty, ten cents ($0.10) per net pound for such peanuts or peanut products. It is agreed that such liquidated damages are a reasonable estimate of the probable actual damages which CCC would suffer because of such reentry, diversion, or transshipment.

(5) *Evidence of Export.* The handler shall furnish the association with the following documentary evidence of exportation of peanuts or products not later than 30 days after the final date for exportation.

(i) *Export by water.* A non-negotiable copy of an onboard ocean bill of lading, signed, or initialed on behalf of the carrier, showing the date and place of loading onboard vessel, the weight of the peanuts, peanut meal, or products exported, the name of the vessel, the name and address of the exporter, and the consignee and the destination. Peanut meal which is unsuitable for use as feed because of contamination by aflatoxin shall be identified on the bill of lading according to this section.

(ii) *Export by rail or truck.* A copy of the bill of lading (showing the weight of the peanuts, peanut meal, or peanut products exported) supplemented by a copy of the Shipper's Export Declaration. Peanut meal which is unsuitable for feed use because of contamination by aflatoxin shall be identified on the bill of lading according to this section.

(iii) *Certified statement.* A statement signed by the handler specifying the name and address of the consignee and the applicable Bureau license number if exportation has been made to one or more of the countries or areas for which a validated license is required under regulations issued by the Bureau of International Commerce, U.S. Department of Commerce.

§ 1446.10 Availability of warehouse storage loans.

(a) *Loans to associations.* CCC will make warehouse storage loans to the associations specified in § 1446.1, which contract with CCC to arrange for the storing and handling of farmers stock peanuts, make advances to producers on such peanuts, and use such peanuts as collateral for loans to be obtained from CCC. Loans on quota peanuts shall be made on the basis of the quota support rate, and loans on additional peanuts shall be on the basis of the additional support rate. The association shall establish an adequate system of records to identify each lot of peanuts delivered from producers as quota or additional peanuts and shall establish adequate records to identify whether such peanuts were pledged at the quota loan rate or additional loan rate. Such loans will mature on demand. Any excess peanuts, after collection of the applicable penalty, shall be eligible for loan as additional peanuts at the additional loan rate. Any peanuts affected by Aspergillus flavus mold may be placed under loan at the additional loan rate and shall share in the applicable pool.

(b) *Areas.* Price support advances will be available in the following areas:

(1) The Southeastern area consisting of the States of Alabama, Georgia,

Mississippi, Florida, and that part of South Carolina south and west of the Santee-Congaree-Broad Rivers.

(2) The Southwestern area consisting of the States of Arizona, Arkansas, California, Louisiana, New Mexico, Oklahoma, and Texas.

(3) The Virginia-Carolina area consisting of the States of Missouri, North Carolina, Tennessee, Virginia, and that part of South Carolina north and east of the Santee-Congaree-Broad Rivers.

(c) *Where available.* Price support advances will be available to eligible producers at warehouses which have entered into peanut receiving and warehouse contracts with the association. Such contracts will require the warehouses to inform producers that price support advances are available and to make advances to producers on eligible peanuts tendered for price support as provided in paragraph (g) of this section. The contracts will require warehouses to examine the producer's marketing cards to determine price support eligibility and will require the warehouse to make entries on the marketing card as required by Part 729 of this title and record each delivery as to quota or additional peanuts and date of delivery. If quota peanuts are delivered, the balance of the quota must be shown after each delivery. All documents furnished the association must identify each lot as quota or additional peanuts. The names and locations of such warehouses may be obtained from the office of the appropriate association or from a State or county ASCS office. The associations shall pledge to CCC all peanuts upon which they have made price support advances as security for loans obtained pursuant to agreements with CCC.

(d) *Time.* Price support advances to eligible producers on peanuts of any crop will be available from the beginning of harvest through the following January 31 or such later date as may be established by the Executive Vice President, CCC. If the final date of availability falls on a nonworkday for the association, the applicable final date shall be the next workday.

(e) *Inspection.* The type and quality of each lot of farmers stock peanuts delivered to an association for a price support advance shall be determined by an inspector when such peanuts are received at a warehouse under contract with an association.

(f) *Producer agreement.* To obtain a price support advance, the producer shall, in writing, authorize the association to pledge peanuts delivered to the association to CCC as collateral for a warehouse storage loan, and relinquish any right to redeem or obtain possession of such peanuts.

(g) *Advance to producer.* For each lot of peanuts received, the associations will made a price support advance to the producer in an amount equal to the support value of such peanuts, except that, in addition to marketing quota penalties and the deductions specified in § 1446.12, the association will deduct from such advances and pay over to the proper State authorities, any assessments or excise taxes imposed by State law, and the Southwestern Peanut Growers Association will, upon the prior agreement of the producer, deduct from such advance an amount approved by CCC, not to exceed 50 cents per net weight ton of peanuts upon which such advance was made, to be used in payment for its peanut activities outside the price support program.

(h) *Fraud of Producer.* The making of any fraudulent representation by a producer in the loan documents or in obtaining a loan or advance shall render him subject to criminal prosecution under Federal law. The producer shall be personally liable to CCC, aside from any additional liability under criminal or civil frauds statutes, for the amount of such advance and for all costs which CCC would not have incurred except for the producer's fraudulent representation, together with interest upon such amounts at the rate for fraudulent representation as shown in a separate notice in the FEDERAL REGISTER: *Provided,* that the producer shall be given credit for the proceeds received by CCC upon sale of the peanuts upon which such advance was made.

§ 1446.11 Pooling and distribution of net gains.

The association shall establish separate pools by area, type, and segregation or quality of peanuts and maintain separate, complete and accurate records for quota peanuts under loan and for additional peanuts not under contract. Net gains on peanuts in each pool shall be distributed to each grower in proportion to the value of peanuts placed in the pool by the grower.

(a) *Quota pool.* Net gains from peanuts in the quota pool consist of:

(1) The net gains over and above the loan indebtedness on quota peanuts and other costs or losses incurred by CCC on such peanuts placed in the pool by a producer, plus

(2) An amount from the net gains on additional peanuts sold into domestic food and related uses equal to the losses incurred on disposing of an equal quantity of quota peanuts of the same type and segregation in the same production area, considering sales of quota peanuts for export first and then as necessary, sales for crushing.

(b) *Additional pool.* Net gains for peanuts in the additional pool consists of:

(1) The net gains over and above the loan indebtedness on additional peanuts and other costs or losses incurred by CCC on such peanuts placed in the pool by a grower, less

(2) An amount of the net gains on the additional pool allocated to the quota pool to offset any loss on that pool attributed to additional peanuts being used in domestic edible use; except

(3) Any distribution of net gains on additional pools of any type to a producer shall be reduced to the extent of any loss incurred by CCC on quota peanuts of a different type placed under loan by the same producer.

§ 1446.12 Producer indebtedness.

(a) *Facility and drying equipment loans.* If any installment or installments on any loan made by CCC on farm storage facilities or drying equipment are payable under the provisions of the note evidencing such loan out of any amount due the producer under this subpart, the amount due the producers after deduction of amounts due prior lienholders, shall be applied to such installment(s) provided the amount due is recorded on the producer's marketing card.

(b) *Producers listed on county debt record.* If the producer is indebted to CCC or to any other agency of the United States and such indebtedness is listed on the county debt record and recorded on the producer's marketing card, amounts due the producer under this subpart, after deduction of amounts due prior lienholders and on farm storage facilities or drying equipment, shall be applied to such indebtedness as provided in the Secretary's Setoff Regulations, part 13 of this title.

(c) *Producer's right.* Compliance with the provisions of this section shall not deprive the producer of any right he would otherwise have to contest the justness of the indebtedness involved in the setoff action either by administrative appeal or by legal action.

§ 1446.13 Eligible producer.

(a) *Requirements.* An eligible producer is an individual, partnership, association, corporation, estate, trust or other legal entity, and whenever applicable, a State, political subdivision of a State or any agency thereof, producing peanuts as a landowner, landlord, tenant, or sharecropper on a farm. To qualify for price support at the quota rate, the peanuts must have been produced on a farm on which the final acreage does not exceed the effective farm allotment. Determinations of the final acreage shall be made pursuant to the marketing quota regulations and the compliance regulations. No producer on a farm for which the farm operator fails timely to file a report of crop or land use acreages as required by part 718 of this title shall

be eligible for price support at the quota rate unless the late filed report was accepted by the county committee.

(b) *Estates and trust.* A receiver of an insolvent debtor's estate, an executor or an administrator of a deceased person's estate, a guardian of an estate or of a ward of an incompetent person, and trustees of a trust estate shall be considered to represent the insolvent debtor, the deceased person, the ward or incompetent, and the beneficiaries of a trust, respectively, and the production of the receiver, executor, administrator, guardian or trustees shall be considered to be the production of the person he represents. Loan documents executed by any such person shall be accepted by CCC only if they are legally valid and such person has the authority to sign the applicable documents.

(c) *Eligibility of minors.* A minor who is otherwise an eligible producer shall be eligible for price support only if he meets one of the following requirements: (1) The right of majority has been conferred on him by court proceedings or by statute; (2) a guardian has been appointed to manage his property and the applicable price support documents are signed by the guardian; or (3) a bond is furnished under which a surety guarantees to protect CCC from any loss incurred for which the minor would be liable had he been an adult.

§ 1446.14 Eligible peanuts.

Peanuts eligible for price support advances shall be farmers stock peanuts of the applicable crop which were produced in the United States by an eligible producer, and

(a) Which contain not more than 10 percent moisture, and which if they have been mechanically dried, contain at least 6 percent moisture;

(b) Which contain not more than 10 percent foreign material;

(c) Which are free and clear of all liens and encumbrances, including landlord's lien, or if liens or encumbrances exist on the peanuts, acceptable waivers are obtained; and

(d) In which the beneficial interest is in the producer who delivers them to the association and has always been in such producer or in such producer and a former producer whom such producer succeeded before the peanuts were harvested. To meet the requirements of succession to a former producer, the rights, responsibilities, and interest of the former producer with respect to the farm on which the peanuts were produced shall have been substantially assumed by the person claiming succession. Mere purchase of a crop prior to harvest, without acquisition of any additional interest in the farm on which the peanuts were produced, shall not constitute succession. Any producer in doubt as to whether such interest in the peanuts complies with the requirements of this section should, before applying for price support, make available to the county ASC committee all pertinent information which will permit a determination with respect to succession to be made by CCC.

(e) Which are, if delivered to the association in bags in the southwestern area; in new or thoroughly cleaned used bags which are made of material other than mesh or net, weighing not less than 7½ ounces nor more than 10 ounces per square yard and containing no sisal fibers, are free from holes and are finished at the top with either the selvage edge of the material, binding, or a hem. Such bags shall be of uniform size with approximately 2 bushel capacity.

(f) Must not have been produced on land owned by the Federal Government if such land is occupied without a lease permit or other right of possession.

§ 1446.15 Disposition and liquidated damages on segregation 2 and segregation 3 peanuts.

(a) Any producer who has a lot of farmers stock peanuts classified by the inspector as segregation 2 or segregation 3 peanuts may (1) deliver the peanuts to the association for loan at the additional loan rate, (2) reclean any lot, or have such lot recleaned, for the purpose of removing loose shelled kernels, damaged kernels, and foreign material, or (3) retain the lot for use as seed. If the producer elects to reclean the lot, or to have it recleaned, such producer will be given a copy of the Inspection Certificate and Sales Memorandum, Form MQ-94. The producer shall return such copy, along with the lot it represents, and any other information necessary to account for the entire lot, to an inspector for a second inspection by the close of business on the next workday following the initial inspection. If the peanuts are again classed segregation 2 or segregation 3 peanuts, upon the second inspection, the producer shall, at the point of second inspection, offer the lot to the association for loan at the additional loan rate, or if the producer elects to retain the lot for seed he shall designate such peanuts as quota peanuts, have the net weight of such peanuts determined and deducted from the farm marketing card, and advise the inspector that he is retaining the peanuts for seed. Such peanuts shall be ineligible for farm stored loans and purchases. The producer shall be given a copy of the MQ-94 as his record showing the quantity and quality factors of the peanuts and must store such peanuts separate from other peanuts on the farm. Such peanuts shall be inspected periodically and otherwise supervised by CCC. The producer shall notify CCC when such peanuts are used as seed peanuts and otherwise account for the disposition of all seed peanuts. The producer shall be ineligible for quota price support on all peanuts at the close of business on the next workday following the initial inspection if the applicable segregation 2 or segregation 3 peanuts are not retained for use on the farm or disposed of as provided in this subsection.

(b) *Liquidated damages.* The producer and CCC agree that CCC may incur serious and substantial damages to its program to support the price of peanuts if segregation 2 or segregation 3 peanuts are disposed of other than in accordance with the provisions of paragraph (a) of this section; that the amount of such damages will be difficult, if not impossible, to ascertain exactly; and that the producer shall, with respect to any lot of peanuts ineligible for quota support which are placed under quota loan or any lot of peanuts which is placed under quota loan by a producer after he has disposed of any lot of segregation 2 or segregation 3 peanuts in any manner other than in the manner prescribed in paragraph (a) of this section, pay to CCC, as liquidated damages and not as a penalty, seven cents ($0.07) per net pound of such peanuts. It is agreed that such liquidated damges are a reasonable estimate of the probable actual damages which CCC would suffer because of such action by the producer. The provisions of § 1446.11 relating to the prodcuer's liability (aside from liability under criminal and civil frauds statutes) shall not be applicable to such peanuts.

§ 1446.16 Producer transfers of additional loan stocks to quota pools.

Producers may transfer additional loan stocks to quota loan not to exceed the undermarketing of quota peanuts shown on the farm marketing card after the producer has completed marketings and returned the marketing card to the county office provided: (a) An insufficient quantity of segregation 1 peanuts was produced on the farm to fill the poundage quota, (b) all segregation 1 peanuts from the farm have been disposed of as quota peanuts, and (3) the producer forfeits eligibility to share in profits from any pool. The support values for any segregation II peanuts so transferred shall be the support value for quota peanuts minus the damage discount published in the quota support schedule and the support value for segregation 3 peanuts shall be the support value for quota peanuts minus the applicable discount published in the quota support schedule. Producers eligible to transfer additional loan peanuts to the quota loan in accordance with this section may apply for such transfers with the

county office. The county office shall determine the quantity of undermarketing of quota peanuts and the quantity of additional peanuts which are eligible for transfer. The producer may indicate to the county office the net weight and applicable Inspection Certificate and Sale Memorandum (Form MQ-94) numbers to be transferred. Such pounds shall be considered as quota peanuts marketed, the applicable MQ-94's recomputed at the quota loan level, and the producer advanced the difference between the additional and quota support.

Signed at Washington, D.C., on March 28, 1978.

RAY FITZGERALD,
Executive Vice President,
Commodity Credit Corporation.

[FR Doc. 78-8780 Filed 4-3-78; 8:45 am]

[3410-34]

Animal and Plant Health Inspection Service

[9 CFR Part 92]

IMPORTATION OF HORSES

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of extension of time for comments.

SUMMARY: This document would extend the comment period on the proposed rulemaking published in the FEDERAL REGISTER, February 17, 1978 (43 FR 6957-6958), which would permit the entry of certain horses into the United States from the United Kingdom, Ireland, and France which are countries affected with contagious equine metritis (CEM) when specific conditions are met. This action is proposed to comply with requests received from a representative of the Infectious Disease Committee, United States Animal Health Association and other interested parties to provide additional time in which to prepare relevant data and information and to develop sound views and comments. The effect of this action would be to extend the comment period on the subject proposed rule for an additional 30 days.

DATE: Comments must be received on or before May 1, 1978.

ADDRESS: Send comments to Deputy Administrator, USDA, APHIS, VS, Room 821, Federal Building, 6505 Belcrest Road, Hyattsville, Md. 20782.

FOR FURTHER INFORMATION CONTACT:

Dr. D. E. Herrick, USDA, APHIS, VS, Room 815, Federal Building, Hyattsville, Md. 20782, 301-436-8170.

SUPPLEMENTARY INFORMATION: On February 17, 1978, there was published in the FEDERAL REGISTER (43 FR 6957-6958) a notice of proposed rulemaking which would amend the regulations (9 CFR 92.2, 92.4, and 92.17) to provide for the importation of certain horses from the United Kingdom, Ireland, and France which are countries affected with CEM under certain specified conditions.

This proposal provided for receipt of comments on or before March 20, 1978.

In response to this proposal requests were received from a representative of the Infectious Disease Committee, U.S. Animal Health Association and other interested parties for additional time in which to obtain relevant data and information and to develop sound views and comments. Since the Department is interested in receiving meaningful views and comments, these circumstances are considered justification for an extension of the time period originally allotted for submitting views and comments. Therefore the period for the submission of comments concerning the proposal is hereby extended until May 1, 1978.

Done at Washington, D.C., this 29th day of March 1978.

E. A. SCHILF,
Acting Deputy Administrator,
Veterinary Services.

[FR Doc. 78-8709 Filed 4-3-78; 8:45 am]

[3410-34]

VIRUSES, SERUMS, TOXINS, AND ANALOGOUS PRODUCTS

[9 CFR Part 1131]

Proposed Rulemaking

AGENCY: Animal and Plant Health Inspection Service USDA.

ACTION: Proposed rule.

SUMMARY: This proposed amendment would lower the minimum virus titer for three live virus vaccines. This action would be taken to improve the safety characteristics of the products without affecting their efficacy. One minor change would be made in the requirement for titration of Marek's Vaccine, which will not affect the validity of the results.

DATE: Comments must be received on or before May 1, 1978.

ADDRESS: Interested parties are invited to submit written data, views, or arguments regarding the proposed regulations to: Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 828-A, Federal Building, Hyattsville, Md. 20782.

FOR FURTHER INFORMATION CONTACT:

Dr. R. J. Price, 301-436-8245.

SUPPLEMENTARY INFORMATION: The present requirements for Feline Panleukopenia Vaccine, Canine Hepatitis Vaccine, and Canine Distemper Vaccine, Ferret Avirulent, include minimum virus titers of $10^{3.0}$ throughout the dating period, regardless of the antigenicity and stability of the vaccines. It has been determined that the safety characteristics of these products shall be improved by reducing the minimum virus titer requirements to $10^{2.5}$ throughout dating.

The requirements for Marek's Disease Vaccine include the statement "shall be incubated at 37°C for 3 days before preparation for use in the titration test." As worded, this requirement has been applied to vaccine prior to release and to vaccine after release. The requirement that vaccine which has been released for sale must be incubated prior to the titration test is considered unnecessarily severe. This amendment would revise the virus titer requirements by limiting the incubation requirement to testing for release.

The first letter in each word of the headings for §§ 113.139, 113.140, 113.141, and 113.165 are to be capitalized.

1. § 113.139 would be amended by revising paragraph (d)(2) to read:

§ 113.139 Feline Panleukopenia Vaccine.

* * * * *

(d) * * *

(2) *Virus titer requirements.* Final container samples of completed product shall be tested for virus titer using the titration method used in paragraph (c)(2) of this section. To be eligible for release, each serial and each subserial shall have a virus titer sufficiently greater than the titer of vaccine used in the immunogenicity test prescribed in paragraph (c) of this section to assure that when tested at any time within the expiration period, each serial and subserial shall have a virus titer of $10^{0.7}$ greater than that used in such immunogenicity test but not less than $10^{2.5}$ ID_{50} per dose.

2. § 113.140 would be amended by revising paragraph (d)(2) to read:

§ 113.140 Canine Hepatitis Vaccine.

* * * * *

(d) * * *

(2) *Virus titer requirements.* Final container samples of completed product shall be tested for virus titer using the titration method used in paragraph (c)(2) of this section. To be eligible for release, each serial and each subserial shall have a virus titer sufficiently greater than the titer of vaccine virus used in the immunogenicity test prescribed in paragraph (c) of this section to assure that when tested at any time within the expiration period, each serial and subserial shall have a

virus titer of $10^{0.7}$ greater than that used in such immunogenicity test but not less than $10^{2.5}$ $TCID_{50}$ per dose.

3. § 113.141 would be amended by revising paragraph (d)(2) to read:

§ 113.141 Canine Distemper Vaccine, Ferret Avirulent.

* * * * *

(d) * * *

(2) *Virus titer requirements.* Final container samples of completed product shall be tested for virus titer using the titration method used in paragraph (c)(2) of this section. To be eligible for release, each serial and each subserial shall have a virus titer sufficiently greater than the titer of vaccine virus used in the immunogenicity test prescribed in paragraph (c) of this section to assure that when tested at any time within the expiration period, each serial and subserial shall have a virus titer of $10^{0.7}$ greater than that used in such immunogenicity test but not less than $10^{2.5}$ ID_{50} per dose.

4. § 113.165 would be amended by revising paragraph (d)(3) to read:

§ 113.165 Marek's Disease Vaccine.

* * * * *

(d)* * *

(3) *Potency test.* The samples shall be titrated in a cell culture system or by any other titration method acceptable to Veterinary Services. Vaccine samples of desiccated vaccine shall be incubated at 37° C for 3 days before preparation for use in the titration test required to be performed prior to the release of a product. A satisfactory serial or subserial shall contain at least 1,500 plaque forming units per dose at release and maintain at least 1,000 plaque forming units when tested without incubation at any time before the expiration date.

All written submissions made pursuant to this notice will be made available for public inspection at the address listed in this document during regular hours of business (8 a.m. to 4:30 p.m., Monday to Friday, except holidays) in a manner convenient to the public business (7 CFR 12.7(b)).

Done at Washington, D.C., this 28th day of March 1978.

NOTE.—The Animal and Plant Health Inspection Service has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

PIERRE A. CHALOUX,
Deputy Administrator,
Veterinary Services.

[FR Doc. 78-8534 Filed 4-3-78; 8:45 am]

[3410-37]

Food Safety and Quality Service

[9 CFR Part 381]

WATER IN POULTRY CHILLERS

Adjustment in Required Levels

AGENCY: Food Safety and Quality Service USDA.

ACTION: Proposed rule.

SUMMARY: This proposal would amend the Federal poultry products inspection regulations to authorize operators of poultry establishments to reduce the required amount of fresh water input to continuous poultry chillers by 50 percent provided the incoming water contains 20 parts per million (ppm) available chlorine. This proposal is necessary in order to allow the reduction of water consumption by poultry establishments.

DATE: Comments must be received on or before July 3, 1978.

ADDRESSES: Written comments to: Hearing Clerk, U.S. Department of Agriculture, Room 1077, South Agriculture Building, Washington, D.C. 20250. Oral comments on poultry products inspection regulations to: Dr. Lyons, Area Code 202-447-3219.

FOR ADDITIONAL INFORMATION ON COMMENTS, SEE SUPPLEMENTARY INFORMATION.

FOR FURTHER INFORMATION CONTACT:

Dr. J. P. Lyons, Inspection Standards and Regulations Staff, Meat and Poultry Inspection Program, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C. 20250. Area Code 202-447-3219.

SUPPLEMENTARY INFORMATION:

COMMENTS

Interested persons are invited to submit comments concerning this proposal. Written comments must be sent in duplicate to the Hearing Clerk. Comments should bear a reference to the date and page number of this issue of the FEDERAL REGISTER. Any person desiring opportunity for oral presentation of views must make such request to Dr. J. P. Lyons so that arrangements may be made for such views to be presented. A transcript shall be made of all views orally presented. All comments submitted pursuant to this notice will be made available for public inspection in the Office of the Hearing Clerk during regular hours of business.

CHILLING OF POULTRY

Freshly slaughtered poultry must be cooled quickly in order to prevent spoilage. This is usually accomplished by immersion in tanks of water chilled by ice or by mechanical means. These tanks hold several thousands of gallons of water and are called continuous chillers. As elsewhere in nature, all poultry carcasses have a resident flora of bacteria. It has been shown that passage of the carcasses through a continuous chiller reduces the number of bacteria. However, this reduction is partially offset because simultaneous to chilling a slow but continuing bacterial growth occurs. The amount of growth depends on the circumstances of chiller capacity, time, temperature, cleanliness of ingoing carcasses, chlorination, water exchange, and other similar factors.

Section 381.66(c)(2)(ii) of the poultry products inspection regulations sets minimum levels of water exchange in continuous poultry chillers. These levels are on a per carcass basis. The regulations require at least one gallon for each turkey and at least one-half gallon for each frying chicken. At the time these levels of water exchange were established, water supplies seemed limitless, and the disposal of this amount of water from the processing plant posed no problem in either the immediate or foreseeable future.

Further, at the time a minimum quantity limit was first imposed on chiller water, the limit was placed upon frying chickens and "proportionately more" was required for other species. Later, a limit was added specifically to cover turkeys. The Administrator now believes that, as far as the quantity of chiller water is concerned, geese should be treated the same as turkeys because of the similarity in the amount of surface area to be chilled, and ducks and guineas should be treated the same as chickens for the same reason. Therefore, a prescribed amount can be proposed for each species of poultry thus eliminating a potential source of varying interpretation. The prescribed amount would be, in any case, a minimum and if in a specific case more water is required to maintain the chiller in a sanitary condition, the inspector in charge may require the plant to use more water.

WATER AND POULTRY PRODUCTION

Water has now become a critical resource and the disposal of large amounts of water an economic and an environmental concern. The Department recognizes the cost significance of these concerns and is committed to a cooperative effort to reduce industry water usage. Although poultry processors have generally taken steps to reduce their water consumption in recent years, they are still among the most water intensive processors in the food industry. Water reduction efforts recently undertaken by the Depart-

ment include a comprehensive review of all regulatory requirements and policies related to the use of water in poultry processing. Recently, the Administrator was asked whether the amount of intake water presently required by regulation for chilling poultry was necessary or whether lesser amounts would accomplish the same end. The poultry industry in Virginia also raised the same question with research and extension personnel at the Virginia Polytechnic Institute and State University (VPI).

A study of the attributes of poultry chillers (turbidity, suspended solids, microbiological profile, and pH) which may affect the condition of the product or chill media, was conducted by VPI. The study reported that, for the circumstances studied, 50 percent reduction in water exchange rate for the several kinds of poultry had no significant effect on the quality of the product or the chill media.

USDA Studies

The Department undertook field studies of its own to see if currently required water intake levels could be adjusted. These were run in locations different from the VPI studies. The field studies emphasized the relationship of water intake to the microbiological quality of the poultry and that of the chill media. At the same time, review of the available literature and a consideration of the findings of a Department advisory committee on salmonellae was undertaken. This is of interest because salmonellae bacteria have been frequently associated with food infection episodes traced to poultry.

The results of those Department field tests showed that the total number of bacteria remaining on representative carcasses removed from chill tanks tended to increase when the intake water was reduced.[2] The average increase in bacterial level corresponding to a 50 percent water reduction was estimated at 1.8 times on carcasses and 1.5 in the water for broiler chickens. The median increase in the bacterial level was estimated at 1.8 times on carcass and 1.7 in the water. The latter estimate is generally considered to give a better expression of the change. The data available describing bacterial levels on turkeys compares the loads at 170 percent of the minimal per bird water requirement with that at 50 percent. The corresponding average increases were 3.2 times on the carcasses and 3.2 times in the chill water, with median values at 3.9 times and 2.1 times respectively. Interpolating these data to estimate the increases in bacterial levels that might be expected when water is reduced from the minimal (100 percent) per bird requirement to 50 percent of that level indicates that the average increase for carcasses would be 1.3 times and for chill water would be 1.3 times with median values at 1.6 and .9 times respectively. These increases are comparable to those obtained for the broiler chickens. Although a microbiological standard for such poultry carcasses has not been established, the significance of these increases in the bacteria level from a public health standpoint does not appear to be great. There is, however, a departmental policy that calls for an all out effort to reduce the number of organisms on food wherever they are present with specific reference to those of the *Salmonella* variety.

Effect of Chlorination

The bactericidal properties of chlorine on bacterial cells in general and on salmonellae in particular are well documented. A 20 ppm value of available chlorine was established as proper for poultry operations from recommendations contained in documents received from the public concerning a related rulemaking action "Poultry Slaughter Practices," 42 FR 41873.[3] Some of these references are: Barnes, E. M. and Mead 1971. Clostridia and Salmonellae In Poultry Processing. Poultry Disease and World Economy. 47-63 Drewniak, E. A. et al. 1954. Studies on Sanitizing Methods for Use In Poultry Processing. USDA Circular No. 930. Reprinted without change in text 1964. Nilsson, T. and Regner, B. 1963. The Effect of Chlorine in the Chilling Water on Salmonellae in Dressed Chicken. Acta. Vet. Scand. 4: 307-312. Waybeck, C. J. et al. 1968. Salmonella and Total Count Reduction in Poultry Treated with Sodium Hypochlorite Solutions. Pov. Sci. 47. 1090-1094

Since the Department studies showed an increase in bacterial numbers, when the fresh water intake of continuous poultry chillers is reduced to 50 percent of the current requirements, an unconditional change would not be consistent with departmental policy. However, in view of the antibacterial action of chlorine, the Department proposes a 50 percent water reduction in conjunction with intake water that contains 20 parts per million (ppm) available chlorine in the continuous poultry chillers. This would appear to be in the public interest in resource and environmental management. The Department believes that this could be achieved with no detrimental effect on the wholesomeness of poultry available to consumers.

Therefore, the Food Safety and Quality Service is proposing to amend the first sentence of §381.66(c)(2)(ii) of the poultry products inspection regulations to read as follows:

* * * * *

§381.66 Temperatures and chilling and freezing procedures.

* * * * *

(c) * * *

(2) * * *

(ii) With respect to continuous chilling systems, the fresh water intake in the first section of the system, after all sections of the system are filled with water, shall be not less than one-half gallon per chicken, duck, or guinea, and not less than one gallon per goose or turkey: *Provided*, That if the fresh water intake, including that used to fill chillers but excluding ice, consists entirely of fresh water that contains 20 ppm available chlorine, the fresh water intake shall be not less than one-fourth gallon per chicken, duck or guinea, and not less than one-half gallon per goose or turkey.

* * * * *

NOTE.—The Food Safety and Quality Service has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

Done at Washington, D.C., on March 29, 1978.

ROBERT ANGELOTTI,
Administrator, Food Safety and Quality Service.

[FR Doc. 78-8710 Filed 4-3-78; 8:45 am]

[2] A copy of these tests will be on file in the Office of the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. Additionally, copies will be provided free upon request to Dr. J. P. Lyons, Inspection Standards and Regulations Staff, Technical Services, Meat and Poultry Inspection Program, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C. 20250.

[3] A copy of these documents will be on file in the Office of the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. Additionally, copies will be provided free upon request to Dr. J. P. Lyons, Inspection Standards and Regulations Staff, Technical Services, Meat and Poultry Inspection Program, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C. 20250.

[6320-01]

CIVIL AERONAUTICS BOARD

[PDR-50; Docket No. 29880; Dated: March 16, 1978]

[14 CFR Part 304]

COMPENSATION OF PARTICIPANTS IN BOARD PROCEEDINGS

Proposed Rulemaking

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice proposes to establish a program to promote public participation in CAB proceedings. Reimbursement for the costs of participation would be provided to eligible participants. Compensation would be paid to applicants whose participation in a proceeding can be expected to contribute substantially to a full and fair determination of the issues presented. To qualify, an applicant would also need to be financially unable to participate without compensation. This proposal responds to a petition for rulemaking filed by the Aviation Consumer Action Project and the Institute for Public Interest Representation.

DATES: Comments by May 19, 1978. Reply comments by June 5, 1978. Comments and other relevant information received after these dates will be considered by the Board only to the extent practicable. Requests to be put on Service List by April 19, 1978. Docket Section prepares the Service List and sends it to each person listed, who then serves his comments on others on the list.

ADDRESSES: Twenty copies of comments should be sent to Docket 29880, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple copies. Comments may be examined in Room 711, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C., as soon as they are received.

FOR FURTHER INFORMATION CONTACT:

Mark Schwimmer, Civil Aeronautics Board, Office of the General Counsel, 1825 Connecticut Avenue NW., Washington, D.C. 20428, 202-673-5442.

SUPPLEMENTARY INFORMATION: The Aviation Consumer Action Project (ACAP) and the Institute for Public Interest Representation petitioned the Board in October 1976, to establish a program to promote public particiption in Board proceedings. The program would provide compensation for attorneys' fees, expert witness fees, and other costs of participation incurred by qualifying participants. To qualify, a participant would need to represent "an interest which will substantially contribute to a full and fair determination of the issues involved in the proceeding" and meet a criterion of financial need.

Responding to the petition, we issued PDR-45, an advance notice of proposed rulemaking, in February 8, 1977 (appearing at 42 FR 8663, February 11, 1977). We agreed in principle with the petition's aims, and requested comment on various questions of detail that it raised. We also discussed our legal authority to spend appropriated money on a compensation program, referring to a series of supporting decisions by the Comptroller General and the decision of a three-judge panel in *Greene County Planning Board* v. *Federal Power Commission*, 559 F.2d 1227 (C.A. 2, 1976) (*Greene County I*). We have now decided that a compensation program would be in the public interest, and by this notice we solicit comment on the particular approach that is discussed below.

The Comments on PDR-45

PDR-45 evoked support for a compensation program from several public interest groups, one air carrier, one other Federal agency, the Board's Office of the Consumer Advocate (OCA), and several individuals.[1] These commenters generally agreed on the following propositions: (1) The quality of Board decision making is enhanced by the participation of representatives of consumer interests and other broad public interests. (2) Skilled, effective representation in administrative proceedings can be very expensive, so that the right to participate—whether by formal intervention as a party, by informal intervention, as a commenter on a proposed rule, or otherwise—is distinct as a practical matter from the ability to participate. (3) Regulated persons have strong and direct financial incentives and resources to spend the money necessary to participate in proceedings that have an immediate impact on their businesses. Public interest groups on the other hand, have limited budgets that preclude their effective participation in all but a few proceedings. Therefore, representation before the Board is currently unbalanced.

The concept of a compensation program was opposed by several air carriers, trade associations, and individuals and one public interest group.[2] Their arguments were of three general types: (1) That there is no need for such a program; (2) that ascertaining who really "represents the public interest" is impracticable and that it would be inappropriate to spend public money to support special interests or individuals who purport to represent the public good; and (3) that the Board may not, or in any avent should not, establish such a program without Congressional guidance.

Some commenters suggested that a compensation program to promote public participation is unnecessary, pointing to the liberal intervention provisions of Rules 14 and 15 of our Rules of Practice (14 CFR §§ 302.14 and 302.15). Others argued that there is no need for such a program because the public interest is already represented by various Board components, most notably OCA. It was suggested also that, to the extent that OCA is not now adequately representing the public interest, a better solution is to expand the budget of or otherwise improve OCA, rather than to give money to private parties.

We disagree with thse arguments. Rules 14 and 15 alone do not, as a practical matter, guarantee effective public participation. Fees for attorneys, expert witnesses, consultants, and clerical services, among others, can make participation in a Board proceeding expensive. The costs are magnified when there are many parties and the proceeding is long. These costs tend to limit participation to parties that have an immediate financial interest in the outcome.

The Senate Committee on Government Affairs examined this effect in a July 1977 study.[3] It found that in calendar year 1976, 11 trunk carriers alone paid nearly $3 million to outside counsel to represent them before the Board. One carrier alone spent $650,000. However, the only "public interest" group that participates substantially in Board proceedings—ACAP—had a total budget of $40,000 in 1976. Of that, only $20,000 was spent on Board matters. Even when augmented by the value of pro bono legal assistance that ACAP received from affiliated groups, this represents less than 1 percent of the amount spent by the trunk carriers. The contrast is sharpened if one considers that the trunks also paid for in-house counsel and the non-legal costs of participation.

The National Legal Center for the Public Interest (NLCPI) pointed out that all members of the public are free to use their time and money as they see fit to participate in agency matters. Therefore, it argued, if an individual is unable to interest others in

[1] Supporting comments were filed by OCA, the Department of Health, Education, and Welfare's Office of Consumer Affairs, ACAP and the Institute for Public Interest Representation, Environmental Defense Fund, Center for Law and Social Policy, Council for Public Interest Law, the firm of Swankin & Turner, and World Airways, in addition to comments from individuals. World's comment particularly urged reimbursement for public participation in the Transcontinental Low Fare Route Proceeding (Docket 30356).

[2] Opposing comments were filed by National Legal Center for the Public Interest, Air Transport Association, TWA, Air Illinois, Privincetown-Boston Airline, Hawaii Air Cargo Shippers Association, Middlewest Motor Freight Bureau, Diamond Travel, and several individuals.

[3] "Study on Federal Regulation: Public Participation in Regulatory Agency Proceedings", Senate Committee on Governmental Affairs, 95th Congress, 1st Session.

combining their resources with him, his views may be aberrational and not shared by other members of the public. We recognize that the amount of money one is willing to spend on participation can reflect the strength of this interest in a matter. Air carriers, for example, must decide almost daily whether and to what extent they wish to pursue their interests before the Board. Each decision is made on the basis of the expected costs and benefits, and the participation expense is a cost of doing business. This is not the case, however, with interests that are of great magnitude in the aggregate but are held so diffusely that any one person's stake is small. While the fact that an individual or small group has attracted many small contributions suggests that it represents a significant interest, its converse is not true. Many significant interests have been underrepresented.[4] The cost and uncertainties of fundraising present a practical barrier. This problem is aggravated when the interest is not of a continuing nature, but arises instead in response to a particular Board activity. For example, a request for route authority to a particular airport, especially a satellite airport, may be opposed by most airlines yet supported by area residents concerned about jobs and area development who have no pre-existing group to represent them.

As we see it, discussion of the merits of a compensation program has been clouded by the varying uses of the words "public interest." Strictly speaking, the "public interest" is the only consideration in every Board proceeding. Section 102 of the Federal Aviation Act sets out some of the factors to be considered in determining where the public interest lies. In urging the Board to adopt its particular position, every participant will argue that the public interest requires that result. Even when a regulated corporation argues for what may appear to be its private rights, it is really arguing that the public interest requires recognition of those rights. Distinct from this meaning of the words, the label "public interest" has been used to describe certain groups. These groups claim to represent the interest of the public-at-large or of broad segments of the public, unlike "private" businesses that pursue, in the first instance, their immediate commercial interest. But a decision that authorizes compensation to enable one of these groups to participate in a proceeding would in no way constitute a determination that its position properly characterizes the overall public interest. In fact, if the decision did imply such a determination, there would be no need for any further proceeding.

Thus, the argument that the Board staff represents "the public interest" is somewhat beside the point. The staff does and always will represent the public interest. But, the term "public interest" either means the correct final decision in any matter, which the five-Member Board itself must reach at the end of the proceeding, or it means all the various "interests" that may be advocated by the public. The staff can and does do much to present what it considers, on the basis of its expertise and common sense, the most reasonable position for the Board to adopt. But in the second sense, it is unrealistic to expect any staff group always to be able to detect and present all these interests to the Board. Furthermore, in a complex case more than mere presentation is needed. All positions are obviously not of equal merit. It is the foundational tenet of our legal system, of which administrative agencies are a part, that decisions are best reached when the decisionmaker is directly exposed to the full force of argument of those on various sides of the question. It is this advocacy of different positions that may be overlooked, misunderstood, or underweighted, whether formal testimony in an adjudicative matter or a comment in a rulemaking proceeding, that is the goal of this program. There is a great value, for both the soundness and the acceptance of our decisions, in promoting voluntary, pluralistic participation by persons representing the variety of interest that may be affected by our actions. Paying for active participation by these interests, on whose behalf we are supposed to operate, would thus complement the staff's function, and in no sense be a substitute for it. This is further reflected in the expectation that funds for the compensation program would make up only 1 percent of our annual budget.

Under the rule that we propose today, a decision to compensate an otherwise qualifying applicant would mean only that the interest is significant enough that its representation appears likely to substantially assist us in fully and fairly resolving the issues presented in the proceeding. We in fact contemplate the eligibility of several applicants representing different points of views in a single proceeding.[5] We also would not rule out compensation for regulated or commercial interests. It is true that the representatives of such interests will rarely be unable to participate without financial assistance. When they truly are unable, however, there appears to be no good reason automatically to preclude their eligibility if it is found that the value of their presentations, in assisting the Board to reach soundly based decisions in the public interest, will justify the expenditure of public funds.

Closely related to the argument that we should not compensate anyone because of the difficulty in ascertaining who represents the public interest is the suggestion of some commenters that public money should not be used to subsidize special interest groups. These commenters misunderstand the thrust of a compensation program. It would create no entitlements to money. Authorizations of compensation would not be based on any right of an applicant to be heard in a proceeding. They would instead be based on the usefulness of his expected presentation to the Board in carrying out its statutory mandate to promote the public interest in aviation regulation. Payments under the program would thus be in the nature of compensation for services rendered.

TWA and NLCPI argued that we cannot legally spend money on a compensation program without explicit statutory authority. Others suggest that even if we do have the authority, we should not exercise it, but should wait instead for specific guidance from Congress.

We have tentatively concluded that we already have implied statutory authority to conduct a compensation program of the type proposed today. The authority is implicit in Section 203 of the Federal Aviation Act, empowering the Board to make such expenditures "as may be necessary for the exercise and performance of the

[4] For further discussion of this subject see, for example, "Study on Federal Regulation", supra; "Federal Agency Assistance of Impecunious Intervenors," 88 Harv. L. Rev. 1815 (1975); Gellhorn, "Public Participation in Administrative Proceedings," 81 Yale L. J. 359 (1971); Lazarus and Onek, "The Regulators and the People," 57 Va. L. Rev. 1069 (1972). Several Commenters argued that it will be very difficult to ascertain which applicants for compensation really represent the public interest. NLCPI criticized the opinion that "the regulated industry presents one view the public interest offers another *single* view and the two views are diametrically opposed." It points out, for example, that an industry opposing a proposed regulation intended to protect consumers will not argue that consumers do not deserve protection, but instead will argue that the protection is not worth the cost. It also points out that there can often be large subclasses of consumers with divergent views of the public interest. We quite agree, and over the years have observed the same phenomenon. We do not believe, however, that uncertainty about who "represents the public interest" compels the conclusion that a compensation program would be impracticable or inappropriate. Indeed, this very uncertainty highlights the need for a program to ensure the effective and undiluted representation of a variety of views.

[5] In this connection, we note that the Federal Trade Commission compensated 44 participants in the first 13 proceedings under its program, and the Department of Transportation compensated 21 in its first 5 proceedings. These programs are discussed further below.

powers and duties vested in and imposed upon the Board by law, and as from time to time may be appropriated for by Congress * * *" (49 U.S.C. 1323). Our current appropriation act provides "For necessary expenses of the Civil Aeronautics Board" (Pub. L. 95-85, August 2, 1977). In PDR-45, we discussed a series of opinions[6] in which the Comptroller General has interpreted similar governing statutes of other agencies as authorizing reimbursement when (1) the participation "can reasonably be expected to contribute substantially to a full and fair determination" of the issues in a proceeding, and (2) the participant is "indigent or otherwise unable to finance its participation." We agree with those interpretations and, applying them to our governing statutes, tentatively adopt them as our own.

We have fully considered the June 30, 1977, decision of the U.S. Court of Appeals for the Second Circuit in the *Greene County* case. In that decision, *Greene County I* was reversed en banc, the full Court agreeing with the Federal Power Commission (FPC) that the Federal Power Act did not authorize the FPC to compensate participants without a more explicit statutory authorization. *Greene County Planning Board* v. *FPC*, 559 F. 2d 1237 (C.A. 2, 1977) (*Greene County II*). There have been further developments in this case, however. On September 27, 1977, the Greene County Planning Board petitioned the Supreme court for certiorari (No. 77-481). On October 1, the Federal Energy Regulatory Commission (FERC) succeeded the FPC as a party in the litigation.[7] The FERC reversed its earlier position, concluded that its governing statute did authorize compensation, and thus concluded that the holding in *Greene County II* was mistaken. On January 12, 1978, the Solicitor General, Department of Justice, filed a brief on behalf of the FERC, urging the Supreme Court to remand the case to the Court of Appeals for reconsideration in light of that conclusion. In denying the petition for certiorari on February 21, the Supreme Court took no position on the merits of the case. In this context and in view of the fact that *Greene County II* did not construe the Federal Aviation Act, we believe that the decision is not a legal prohibition of a Civil Aeronautics Board compensation program. A recent letter from the Department of Justice (John M. Harmon, Assistant Attorney General, March 1, 1978) to our General Counsel confirms this view.

Although bills to provide explict statutory authority have been filed in both Houses of Congress (S. 270 and H.R. 8798), we believe we should not await specific legislative action. By waiting, we would be depriving ourselves of valuable contributions that could not be made without compensation. Moreover, the most recent committee print of S. 270[8] and the experience of other Federal agencies have already provided much guidance. Since August 1975, the Federal Trade Commission (FTC) has been compensating participants in proceedings for the development of Trade Regulation Rules under the Magnuson-Moss Warranty—FTC Improvement Act (15 U.S.C. 57A).[9] Since January 1977, the Department of Transportation's National Highway Traffic Safety Administration (DOT/NHTSA) has been compensating participants in its major auto safety and fuel economy rulemaking proceedings.[10] In addition to these full-scale programs, other agencies have made ad hoc awards,[11] and at least three have outstanding proposals to establish compensation programs.[12]

The Details of This Proposal

We propose to consider applications for compensation in any type of proceeding. Although the other agencies' actual experience in this area is almost exclusively in rulemaking, there is nothing inherently inadvisable about compensation in other types of proceedings. Indeed, it is likely that a smaller fraction of the important issues are resolved through rulemaking at the Civil Aeronautics Board than in those agencies. Therefore, we would not limit our program to rulemakings. "Proceeding" would be defined very broadly, to include any Board process in which there may be public participation. The rule would not enlarge intervention rights or create any new rights to participate. It would only offer an ability to participate to persons who already have such rights.

The timing and procedure of ratemaking, route, enforcement, and other adjudicatory proceedings are less predictable than with rulemaking. In some cases, the usefulness of public participation may not become evident until late in a proceeding. In others, however, it may be apparent near the beginning, before any notice has been published or any action has been taken by the Board. The complaints againt the IATA carriers' competitive response to Skytrain service between New York and London[13] are an example. Because of this unpredictability and the procedural variety of our cases, the proposed rule is drafted to allow maximum flexibility in handling applications for compensation.

We invite comments on the possible form of administration. To help ensure objectivity of eligibility and authorization decisions it would appear best to exclude from the administering bodies those who may be participating as a party in the particular proceeding. The administering body could, however, consider the recommendations of the relevant involved staff members, bureaus or offices that do participate in particular proceedings. One proposal is that the administering body be a committee consisting of the Managing Director, the Director of the Office of Economic Analysis and the General Counsel, or their delegates. This approach to administration is set out in the text of the proposed rule. We propose in the alternative to include a Board Member on the committee, to set up a separate office for the purpose, or to give the task to the Office of the Consumer Advocate. Yet another alternative would be for the Chief Administrative Law Judge to designate a single judge or a panel of judges to administer the program in adjudicated cases, or rulemakings, or both. Delegating this function to the Managing Director's office would be another possibility.[14]

---

[6] Decision of the Comptroller General re Costs of Intervention Nuclear Regulatory Commission (B-92288, February 19, 1976); Letter to Congressman Moss from Comptroller General (B-180224, May 10, 1976); Decision of the Comptroller General re Costs of Intervention—Food and Drug Administration (B-139703, December 3, 1976).

[7] On September 30, pursuant to the Department of Energy Organization Act (DOE Act), Pub. L. 95-91, 91 Stat. 565, and Executive Order No. 12009, 42 FR 46267, the FPC ceased to exist. Most of its functions and regulatory responsibilities were transferred to the FERC, which, as an independent commission within the Department of Energy, was activated on October 1. The "savings provisions" of the DOE Act provide for the substitution of the FERC for the FPC in pending litigation such as this case.

[8] Bill as Reported on May 4, 1977 from the Subcommittee on Administrative Practice and Procedure, Senate Committee on the Judiciary.

[9] The FTC guidelines appear at 42 FR 30480 (June 14, 1977).

[10] The DOT/NHTSA guidelines appear at 42 FR 2864 (January 13, 1977).

[11] See, for example, Consumer Product Safety Commission, 42 FR 34892, July 7, 1977 (Consumers Union); Federal Energy Administration Decision and Order FSG-0042, May 6, 1977 (Consumer Federation of America).

[12] National Oceanic and Atmospheric Administration, Department of Commerce, 42 FR 40711, August 11, 1977; Consumer Product Safety Commission, 42 FR 15711, March 23, 1977; Food and Drug Administration, 41 FR 35855, August 25, 1976.

[13] See Order 77-9-55.

[14] After choosing the particular form of administration, Part 385 of our Organization Regulations would be amended to delegate the necessary authority.

While applications for compensation could be submitted in any proceeding, the board might also invite applications in cases where promoting public

participation would be especially useful.[14a] The invitation would include a closing date for the submission of applications. Because of the variety and unpredictability of timing discussed above, it would be inadvisable to establish closing dates by rule for all proceedings. When there is no invitation, however, applications should be submitted as early as practicable. Prospective applicants would be on notice that early applications would be favored. A late applicant might find that the request of another person representing the same interest has already been approved. Moreover, the Committee would have the discretion to disapprove an application if it found that the applicant was not likely to be able to participate effectively within the time remaining in the proceeding.

Invitations would be published in the FEDERAL REGISTER and could also be publicized in any other media that appeared appropriate. Board publications already receive wide distribution apart from the FEDERAL REGISTER. We solicit comment, however, on methods to further improve the dissemination of information about our proceedings, and the availability of compensation, to consumer groups and other potential public participants. Expanding our mailing lists to include those who have already shown an interest in Board matters could be helpful. Commenters should also address possible methods of more actively promoting the program. We are particularly concerned that it should reach out beyond Washington to individuals and local organizations throughout the country.

An applicant would be required to submit information about its interest, its proposed presentation and expenses, and its financial condition. We recognize the need to minimize the burden placed on prospective participants by the application process. The requirements set out in § 304.5(e) of the proposed rule reflect a balancing of this need with that of the committee for enough information to make its determinations wisely and within the limits of the board's legal authority to award compensation. We call particular attention to the requirement of § 304.5(e)(8) that an application contain "a description of the evidence, activities, or other submissions that the applicant expects to generate." Compensated participation can contribute to the decisionmaking process in essentially two ways: either by offering novel arguments based on existing evidence, or by developing new evidence with accompanying arguments. It appears that improvement of the factual record in our cases could be especially useful: We therefore invite comment on the extent to which applicants who propose to develop new evidence should be favored.

Applications would be submitted and the Committee would approve projected expenditures before the applicant began the work that would be funded. The opposite approach—evaluating applications at the end of a proceeding—would enable funding to be based on the quality and cost of the work actually performed. Most supporters of compensation argue, however, that this approach is unrealistic, and stress the need for prior authorizations. Most public participants would otherwise be precluded from the program, because they could not afford to gamble on subsequent approval of their applications. Therefore, we propose to base the approval on the contribution and expenses that can reasonably be expected. If expenses turned out to be less than the authorized amount, then reimbursement would of course be limited to the costs actually incurred. If they turned out to be more, they could still be reimbursed if the applicant obtained a supplemental authorization before incurring them. The board would take the risk that the quality of the contribution might turn out to be less than had been reasonably expected.[15] We note that the FTC and DOT/NHTSA take this approach, and have found the risk generally to be a good one.[16]

In evaluating an application, the Committee would first determine whether it meets the "substantial contribution" criterion of importance, the "inability to participate without compensation"[17] criterion of financial need, and a "small economic interest" requirement. This requirement is designed to exclude those applicants whose economic stake in a proceeding is sufficient to warrant either the expenditure of personal funds or the borrowing of funds to enable participation. Where the applicant's participation would be exceptionally important, the Committee could waive this requirement. The applicant would still be required, however, to satisfy the financial need test.

The eligibility criteria would be interpreted liberally, but not all applications that satisfied them would necessarily be approved. For example, if several applicants sought to represent the same interest, the Committee could select one of them. If their approaches differed significantly, it could partially or completely approve the applications of two or more. Factors to be weighed in comparing applications are set out in § 304.7(d). Even if there were no overlap of applications, the Committee would have the discretion to disapprove applications from eligible persons. For example, it might conclude that, in light of the limited money available, a particular proceeding or interest is not important enough to merit funded participation. It might also disapprove an application as premature.

The Committee would explain its disposition of each application in writing, including the amount and computation of any compensation authorized. The decision would be mailed to applicants. Copies of each application and decision would be filed in the relevant docket and in a new "Compensation of Participants" file to be maintained in the Board's Public Reference Room. The Committee would also file copies of any informal written communications with applicants and summaries of oral communications.

Although the application and approval process should operate quickly and would be administered in a way that gives great importance to procedural expedition, it would not be instantaneous. In particular cases, a short delay of a proceeding might be advisable in order to afford approved applicants time to prepare their presentations. The merits of delay would have to be evaluated on a case-by-case basis, however. The Committee would therefore be authorized to seek an extension of a filing period or a postponement of a hearing if it appeared necessary in light of all the circumstances. This procedure should not cause any serious delays. In fact, it may in some cases actually reduce the overall length of a proceeding: A short delay to facilitate public participation at an early stage could, by improving the quality of our decision, lessen the likelihood that a reviewing court would remand the case to us for time-consuming further consideration. Moreover, the interest of the types of

[14a] Typical examples might be a rate case in which fundamental questions about the price/quality-of-service tradeoff were raised, and a rulemaking proceeding on consumer protections for charter flight passengers. Our decision-making could benefit from a wider range of public advocacy in such cases, especially when the participants could afford to back up their positions with thorough technical analyses. We ask the commenters to specifically address the matter of the types and relative importance of proceedings in which compensated intervention would likely be requested and be helpful to the board's decisionmaking process.

[15] A prior authorization scheme has also been chosen by the sponsors of S. 270 and H.R. 8798, and by the other agencies that have proposed compensation programs.

[16] Memorandum of meeting with staff members of other agencies, January 24, 1978 (filed in this docket).

[17] In recognition of the fact that most individuals do not keep elaborate financial records, an individual with a gross income below a specified amount would be presumed unable to participate without compensation. While $30,000 is the figure appearing in the proposed text set out below, we also invite comment on other possible cutoff levels that may be preferable.

participants likely to seek compensation will often be in a speedier resolution of a proceeding. The "Chicago Midway Low Fare Route Proceeding" and the "Transcontinental Low Fare Route Proceeding" are recent examples. Even when the net result of funding public participation would be delay, the delay should be short.

While advance authorizations would be a basic feature of the program, advance payments are prohibited by 31 U.S.C. 529. We propose to make actual payment within 90 days after an approved applicant submits a completed, documented claim for its expenses. Progress payments could be made when an applicant's continued participation would otherwise be severely impaired.

The amount of payment would be limited to the reasonable costs of participation. Prevailing market rates would ordinarily be considered reasonable. The proposed rule would prevent windfalls, however, by setting as a ceiling the amount normally paid by the Board for comparable goods or the salaries paid by the Board for comparable services. In determining the comparable salary levels for attorneys, consultants, and others, competence and the number of years' experience would be considered.

To ensure that payments under this part are used for their intended purposes, the Board and the General Accounting Office would have the right to audit the pertinent records of a participant receiving compensation. The Board could also establish by order additional accounting, recordkeeping, and other procedures to be followed by participants.

We would consider the program as experimental during its first year or so. With that experience, we should be in a good position to see how effectively it is serving its intended purpose.

Most of the questions presented in PDR-45 have been tentatively answered by the decisions embodied in this proposal. We believe that the others need not, and in some cases cannot, be answered before a compensation program is begun. As proposed, the rule would allow the flexibility necessary to accommodate the uncertainties of timing. It would also preserve broad discretion to balance competing factors in applying the eligibility and allocation criteria. Actual experience with a program can be expected to highlight any problems or areas where discretion should be confined or expanded.

The FTC has been spending about $500,000 annually on its compensation program and has requested $1,000,000 for next year. Although DOT/NHTSA spent under $100,000 in the first year of its program, it has budgeted $150,000 for the current fiscal year and has requested $250,000 for next year. Because of the amounts of money involved, we have tentatively decided to seek a supplemental appropriation for our Fiscal 1979 budget to fund this proposal.

O'MELIA, MEMBER, SEPARATE STATEMENT

In voting the publication of this notice of proposed rulemaking, the Board is proceeding with a proposal which would afford financial assistance to impecunious intervenors. I have, of course, no objection to soliciting comments on the proposal since the desire to obtain relevant views on proceedings is a laudable goal. However, there are, in my opinion, serious problems with such a move from both a legal and policy standpoint. I must record my reservations on these points and would welcome public comment on them.

The question of whether and when federal funds should be paid to private parties by federal regulatory agencies is a matter which, as the majority is well aware, has received considerable discussion and debate in law review articles, bar association journals, and most recently, Congress. In 1975, the Federal Trade Commission was awarded specific statutory authorization to fund intervening parties by way of the Magnuson-Moss Warranty-FTC Improvement Act of 1975 (15 U.S.C. 57A). Presently there are a number of bills pending in Congress which would confer such explicit statutory authority upon other agencies.

The CAB, like most federal agencies, does not at the present time possess explicit statutory authority to fund litigation and participation expenses of private parties. For several centuries it has been the American Rule that "absent statute or enforcible contract, litigants pay their own attorneys' fees". *Alyeska Pipeline Service Co.* v. *Wilderness Society*, 421 U.S. 240, 95 S. Ct. 1612, 44 L. Ed. 2d 141 (1975). Although the gravamen of this proposed rule is fee reimbursement rather than fee shifting, a statutory basis must nevertheless be present. The authority of an agency to disburse funds must come from Congress. *Turner* v. *FCC*, 514 F. 2d 1354, 1356 (1975). Additionally, sums appropriated for the various branches of expenditure in the public service must be applied solely to the objects for which appropriations were made and for no others. 31 U.S.C. 628.

The NPRM does not contend that there is explicit authority for such a funding program. It concludes instead that there is implied statutory authority and alludes to a series of rulings by the Comptroller General.

The issue of whether a federal agency can, in the absence of a specific grant of statutory authority, reimburse litigants for their expenses was directly confronted in *Greene County Planning Board* v. *FPC*, 559 F. 2d 1237 (CA 2, 1977), cert. denied, February 21, 1977 (No. 77-481). In that case the Second Circuit considered the argument of implied authority and the applicability of the rulings of the Comptroller General.[1] After considering the role and function of the Comptroller General, the U.S. Court of Appeals for the Second Circuit, sitting en banc, held that:

> The authority of a Commission to disburse funds must come from Congress, *Turner* v. *FCC*, U.S. App. 113, 514 F. 2d 1354, 1356 (1975); and it is for Congress, not the Comptroller General, to set the conditions under which payments, if any, should be made. No officer or agent of the United States may disburse public money unless authorized by Congress to do so. *Royal Indemnity Co.* v. *United States*, 313 U.S. 289, 294, 61 S. Ct. 995, 85 L. Ed. 1361 (1941); *Heidt* v. *United States*, 56 F. 2d 559, 560 (5th Cir. 1932); *Fansteel Metallurgical Corp.* v. *United States*, 172 F. Supp. 268, 270, 145 Ct. Cl. 496 (Ct. Cl. 1959). Id at 1239.

The majority here today do not deny the validity nor the impact of the *Greene County* case but they argue that the Federal Aviation Act was not construed in that decision. It is, of course, technically true that our statute was not involved. The Court did clearly emphasize, however, that the Comptroller General does not possess power to legitimize expenditures where statutory authority is absent. A ruling by the Comptroller General is merely an acquienscence to an agency disbursement that "operates as a form of estoppel against subsequent challenge by the GAO." Id. at 1239. It is somewhat ironic that the Notice of Proposed Rulemaking seeks to elude the ambit of *Greene County* but at the same time appears to embrace the holdings of the Comptroller General as authority after they were rejected by the Second Circuit.

The Notice also observes that "the experience of other Federal agencies [has] already provided much guidance". Although reference is made to the Federal Trade Commission's similar program, it must be remembered that the Federal Trade Commission's situation is unique in this regard. As a result of the 1975 Improvement Act, 't possesses explicit statutory authority, a fact that sets it apart from other agencies. The Federal Trade Commission can point to a clear Congressional mandate.

It is true that several agencies have either proceeded with such programs

[1] The Comptroller General has also cautioned: "It would be advisable for the parameters of such financial assistance, and the scope and limitations on the use of appropriated funds for the purpose to be fully set forth by Congress in legislation as was done in the case of the Federal Trade Commission by the provisions of section 202(a) of the Magnuson-Moss Warranty Federal Trade Commission Improvement Act". 42 FR 2864 (Jan. 13, 1977).

on the basis of implied authority,[2] or at least indicated to Congress that they believe they possess such authority.[3] And, of course, the Board before the final decision in *Greene County II*, went on record as supporting such a program "in principle".[4] I believe it is important to note, however, that most of these comments to Congress were submitted shortly after the Second Circuit initially ruled in favor of such funding by the FPC. That favorable ruling was overturned when the Second Circuit, sitting en banc, reversed the three judge panel's decision and adopted the dissenting position of Judge Van Graffeiland. I cannot interpret *Greene County II* as anything but an erosion of this doctrine of implied authority as analogized to fee reimbursement. I question whether these agencies could be as confident in their representations of implied authority in the wake of the Supreme Court's recent denial of the FERC's Petition for a Write Certiorari.

The Department of Justice, Office of Legal Counsel, in a March 1, 1978 letter to the General Counsel, has concluded that *Greene County* does not preclude an agency "from determining whether its organic statutes and other relevant statutes permit some kind of compensation program to be established". I fully agree, but it must be borne in mind that the Justice Department letter is not a determination that we have authority, but is merely an invitation to scrutinize our organic statute for such authority.[5]

While I fully recognize that the enabling statutes of different agencies are far from uniform and that the holding of *Green County II* cannot, because of these disparities, be deemed automatically applicable to all federal agencies, I nonetheless believe that the Department of Justice too narrowly construes this decision when it states that "*no* department or agency (including your department) is bound by that holding". The extent to which an agency eludes the impact of *Greene County* depends, in my judgment, on the extent to which its statutory provisions are distinguishable from those of the FPC. In other words, I believe that an agency with provisions closely resembling those of the FPC might well be obliged to respect the holding in *Greene County*.

In reviewing our statutory framework, the majority discovers implied authority in Section 203 (the General Authority provision) of the Federal Aviation Act and our current appropriation act. Section 203(a) reads as follows:

"AUTHORIZATION OF EXPENDITURES AND TRAVEL

"GENERAL AUTHORITY

"Sec. 203. (72 Stat. 742, as amended by 76 Stat. 921, 49 U.S.C. 1323) (a) The Board is empowered to make such expenditures at the seat of government and elsewhere *as may be necessary for the exercise and performance of the powers and duties vested in and* imposed upon the *Board by law*, and as from time to time may be appropriated for by Congress, including expenditures for (1) rent and personal services at the seat of government and elsewhere; (2) travel expenses; (3) office furniture, equipment and supplies, lawbooks, newspapers, periodicals, and books of reference (including the exchange thereof); (4) printing and binding; (5) membership in and cooperation with such organizations as are related to, or are part of the civil aeronautics in the United States or in any foreign country; (6) making investigatins and conducting studies in matters pertaining to aeronautics; and (7) acquisition (including exchange), operation, and maintenance of passenger-carrying automobiles and aircraft, and such other property as is necessary in the exercise and performance of the powers and duties of the Board: *Provided*, That no aircraft or motor vehicle purchased under the provisions of this section, shall be used otherwise than for official business." [Emphasis added.]

The FPC's statutory analogue, one of the provisions relied upon in *Greene County*, reads in part as follows:

"The commission may make such expenditures (including expenditures for rent and personal services at the seat of government and elsewhere, for law books, periodicals, and books of reference, and for printing and binding) *as are necessary to execute its functions.* Expenditures by the commission shall be allowed and paid upon the presentation of itemized vouchers therefor, approved by the chairman of the commission or by such other member or officer as may be authorized by the commission for that purpose subject to applicable regulations under the Federal Property and Administrative Services Act of 1949, as amended." [Emphasis added.] 16 U.S.C. 793.

Both of these provisions dealing with expenditures are ambiguous to be sure. The CAB's statute makes reference to expenditures "necessary for the exercise and performance of the powers and duties" whereas the FPC's statute refers to expenditures "necessary to execute its functions."[6]

The question that is still not fully answered, and which the commenters should address is whether these differences are enough to confer implied authority for the Civil Aeronautics Board. In this connection, in reviewing our Act and its legislative history I cannot find any suggestion or implication that Congress intended this agency to expend funds to reimburse so-called "public interest" litigants. The majority merely make reference to Section 203 and our current appropriations act. No effort has been made to trace the legislative history and adduce any support for this novel proposition. The FPC statute, whose wording is closely similar to ours, was found insufficient in this regard. Moreover, the fact that Congress is giving great attention to this matter now is no reason to suppose that they intended to give us this authority twenty years ago.

There have been discussions and suggestions in legal circles that *Greene County* was wrongly decided and that the doctrine of implied authority in this context enjoys a greater vitality than was accorded it by the Second Circuit Court of Appeals. It was specifically argued by the FERC in its Petition for a Writ of Certiorari that the Commission's reversal of its initial position regarding its implied authority for such funding might be a critical decisional factor that, if explored on remand, might provoke a different result. Since the Supreme Court declined this invitation to remand *Greene County*, we can only speculate as to the weight carried by the Commission's initial adverse decision on its authority. It is clear, however, that the Second Circuit did scrutinize the statutory base of the FPC and found it inadequate. In light of these circumstances, today's action by the Board needs careful assessment from a legal standpoint before a final rule is issued.

The Board has recently sought a supplemental appropriation for the current fiscal year and an explicit appropriation for next year in order to

---

[2] Although several agencies have opted to attempt funding of such a program without explicit statutory authority, a recent Senate study noted that "Even before this decision some agencies, most notably the Nuclear Regulatory Commission, had declined to proceed under their own authority in this area. It stated that it prefers to act under the mantle of congressional authority. Moreover, the FCC and the ICC have stated that while they may approve compensation of participants in principle, they are unable to provide such assistance in the absence of a special appropriation for that purpose, funding that could only be provided through congressional action." U.S. Senate Committee on Governmental Affairs "Public Participation in Regulatory Agency Proceedings", Volume III as reported in the Congressional Record (March 7, 1978), Volume 124, No. 31, p. S 3189.

[3] U.S. Senate Commerce Committee, "Agency Comments on the Payment of Reasonable Fees for Public Participation in Agency Proceeding", 95th Congress, 1st Session (1977).

[4] Ibid.

[5] The March 1, 1978, letter from the Department of Justice cannot in anyway be characterized as an analysis of our statute. It is a terse epistle which incorporates by reference a response to the Department of Transportation which is said to be "fully applicable to your agency". A review of the DOT letter reveals that there was no specific review of their statute either.

[6] Reference has also been made to the current appropriation bill for the CAB which provides "for necessary expenses". The general appropriation act relied on in *Greene County* authorized "expenses necessary for the work of the commission". I can detect no meaningful distinction on which to base a finding of implied authority.

implement this program. If Congressional authority for such spending is forthcoming, I believe it would largely remedy any existing deficiency and would provide a clear legal basis on which to provide such funding. I do not believe that an amendment to our basic statute is absolutely necessary in order to proceed with such a program. Approval in the context of an appropriation bill would certainly be sufficient. Given *Greene County II* and our present legal posture, I believe the more prudent course would be to wait until Congress has had an opportunity to act. Many of the problems associated with this novel concept could be best resolved through the legislative environment of hearings, testimony, and floor debate. Not only would this obviate the technical question of legal authority, but it would also provide a solid legislative history on which the Board could rely in its implementation.

Aside from the rather narrow question of whether the Board is cloaked with authority under its present statute, I am also skeptical about this program as a matter of policy. There are a number of troublesome dimensions to such public financing, both in terms of eligibility and operation, which I would also like to see addressed in the comments we receive.

The NPRM assumes that this program is necessary to guarantee "effective public participation". It is admitted, as indeed it must be, that there is a measure of uncertainty as to who really represents the public interest. Although there are a number of organizations which purport to be the only genuine representatives of the public at large, the fact is that we are all consumers and public citizens interested in the public interest as we perceive it.

It is this fundamental hurdle—the immense difficulty in ascertaining who really represents the public or consumer interest—that troubles me the most. If federal dollars are to be expended to finance legal representation in proceedings in which the Government is not a party, the importance of identifying eligible recipients of this largesse is paramount if abuse and exploitation are to be guarded against. History is not very consoling in this respect. The likelihood of abuse increases correspondingly with the absence of definitive standards.

There is also, attributable in large part to the absence of definitive standards, a genuine danger of prejudgment in the consideration. We are told in §304.7(a)(1) that an applicant must show that it can "reasonably be expected to contribute substantially to a full and fair determination" of the proceeding. I find this standard to be of such a nebulous character as to make the decision by the Evaluation Committee, however it is eventually structured, almost wholly discretionary. Under such circumstances, a decision to commit Board funds cannot help but indicate an implicit endorsement of the worthiness of the claim itself and the Board's desire to justify the expenditure of public funds on a litigant's presentation may, even if only unconsciously, lead it to give excessive weight to the positions presented by the funded parties. The majority insists that a distinction can be maintained between a decision on funding and a decision on the merits. Where the standard is as discretionary as it is here, I believe that is a dubious supposition. A determination that one can contibute substantially to a full and fair determination entails a weighing of the merits of the case itself.

I also find an absence of logic in the requirements under §304.7(b)(1) that an applicant show that his economic interest is small in comparison to the cost of effective participation. If the applicant's claim is found to be necessary to a full and fair determination of the hearing, it makes little sense to deny his claim because his potential economic stake outweighs his cost of participation. I would presume that if a "representation of a fair balance of interests" cannot be accomplished in his absence it would be imprudent to keep him out because he may profit from the outcome.[7]

The setting up of an evaluation committee also poses potential "separation of powers" problems. This danger is particularly present in the suggestion to involve a Board Member or a judge in the process. I question whether a Member could properly participate in the ultimate decision on the merits if he has been involved in the processing of a funding claim. Similarly, the position of a particular bureau, either as a party or as an advisor, might be compromised if it were involved in the funding decision.

Closely related to this is the problem of the funding. When a statutory right to federal funds is created, the government is usually obliged to provide funding to all who meet the criteria for eligibility. No real effort has been made here to determine what the cost of funding all eligible candidates would be. Instead, we are going to proceed with a finite number of dollars and disburse the funds as qualified individuals apply. What this would seem to portend is that applicants at the end of the fiscal year may, despite qualifying for funds by meeting the criteria, be denied funding. I believe there may be serious legal questions as to whether such a program can be administered on a "first come, first serve" basis.[8] The commenters should address this point.

U.S. Senate Judiciary Committee, Subcommittee on Administrative Practice and Procedure, "Public Participation in Federal Agency Proceedings Act of 1977, S. 270," statement of Senator James B. Allen, 95th Congress, 1st Session.

I find myself considerably distressed by the limits on what constitutes financial need. Particularly troublesome is the provision that any individual litigant whose gross income is less than $30,000 is presumed to be in financial need. I have no idea how such an arbitrary figure as that was reached, but surely it strains the imagination to suppose that an individual making $29,000 per annum is entitled a presumption of financial need. There is some doubt in my mind whether such a person should be automatically classed as an "impecunious intervenor".

Neither am I sure that the setting of Board salaries as the ceiling is a sufficient pecuniary guidepost. I question whether it is feasible to analogize government salaries with the costs of litigation. I would prefer to see more specific enunciations of rates for particular services.

The policy concerns discussed above are also sound reasons for deferring to Congress in this matter. If federal agencies are to have programs such as this one, there is much to be said for having as much uniformity among agencies as possible. Given the fact that the Board has elected, however, to proceed at this juncture, I hope

[7]The proposed rule would provide an exception where the participation is "exceptionally important". This exception only further reinforces my belief that a decision on funding is inextricably linked to a consideration of the merits.

[8]Senator James B. Allen raised identical concerns with respect to the operation of S. 270: I question too, Mr. Chairman, whether there will be enough of the yearly $10 million pie authorized in S. 270 to be divvied up to the satisfaction of all among the many competitors for a slice. I would not argue for an increased authorization, but I am wondering what will happen when an agency adopts regulations permitting taxpayer-funded intervention and then has no money appropriated to its use for that purpose. You know, Mr. Chairman, in fiscal year 1976 the Federal Trade Commission had requests for funding for public intervention far in excess of the $500,000 appropriated. I especially wonder what court response would ensue, if suit were brought against such an agency under the provision of the bill which permits an action in the appropriate court of the United States for the purpose of recovering an award which the agency denied or failed to pay out. Certainly we are going to create legal fee litigation wholly unrelated to public participation in agency proceedings, and at the rate of $75 per hour or greater we are going to enrich a class of lawyers, experts, and other professional public citizens who, in my judgment, will do little but milk the system for every dollar they can obtain.

that we elicit a wide range of comments and suggestions, and that these will be carefully examined before issuing a final rule.

RICHARD J. O'MELIA.

THE PROPOSED RULE

In light of the above, the Civil Aeronautics Board proposes to add a new Part 304 to its Procedural Regulations (14 CFR Part 304), to read as follows:

PART 304—COMPENSATION OF PARTICIPANTS IN BOARD PROCEEDINGS

Sec.
304.1 Scope.
304.2 Purpose.
304.3 Application.
304.4 Definitions.
304.5 Applications for compensation.
304.6 Processing of applications.
304.7 Eligibility and allocation criteria.
304.8 Compensable costs and services.
304.9 Payments to participants.
304.10 Audits.

AUTHORITY.—Secs. 203 and 204 of the Federal Aviation Act of 1958, as amended, 72 Stat. 742 and 743 (49 U.S.C. 1323, 1324)

§ 304.1 Scope.

This part establishes criteria and procedures for compensation to eligible participants in Civil Aeronautics Board proceedings. It does not, however, create any new right to intervene or otherwise participate in any proceeding.

§ 304.2 Purpose.

The purpose of this part is to assist the Board in making full and fair resolutions of the issues presented in its public proceedings by funding the representation of eligible interests that would otherwise be unrepresented.

§ 304.3 Application.

This part applies to all proceedings before the Board.

§ 304.4 Definitions.

(a) "Applicant" means any person who submits an application in accordance with § 304.5 for compensation under this part.

(b) "Evaluation Committee" or "Committee" means the committee established by § 304.6(a).

(c) "Person" means any person as defined in Section 101(29) of the Federal Aviation Act of 1958 (49 U.S.C. 1301(29)) and includes a group of individuals with similar interests.

(d) "Proceeding" means any Board process (including adjudication, licensing, rulemaking, ratemaking, or any other board process) in which there may be public participation pursuant to statute, rule, order, or Board practice.

§ 304.5 Applications for compensation.

(a) Any person may submit an application for compensation for participation in any Board proceeding. The application should be submitted as earlier as practicable.

(b) If the Board anticipates that compensated participation would be especially useful to it in a particular proceeding, it may invite applications for compensation. The invitation, including a closing date for the submission of applications, will be published in the FEDERAL REGISTER and may also be publicized in any other media that appear appropriate. Applications submitted after the closing date will be considered only to the extent practicable.

(c) Applications for compensation will not be considered for work already performed or for costs already incurred.

(d) Applications shall be submitted to the Office of the Secretary, Civil Aeronautics Board, Washington, D.C. 20428, marked for the attention of the "Public Participation Evaluation Committee". Three copies are requested but not required.

(e) Applications shall contain the following information, in the order specified:

(1) The applicant's name and address, and in the case of an organization, the names, addresses, and titles of the members of its governing body and a description of the organization's general purposes, structure, and tax status;

(2) An identification of the proceeding for which funds are requested;

(3) A description of the applicant's economic, social, and other interests in the outcome of the proceeding;

(4) A discussion of the reasons why the applicant is an appropriate representative of those interests, including the expertise and experience of the applicant;

(5) A specific explanation of how the applicant's participation would enhance the quality of the decision making process and serve the public interest;

(6) A statement of the total amount of funds requested;

(7) With respect to the proceeding for which funds are requested, an itemized statement of the services and expenses to be covered by the requested funds;

(8) A description of the evidence, activities, studies, or other submissions that the applicant expects to generate;

(9) An explanation of why the applicant cannot use funds that it already has, or expects to receive, for the purpose for which funds are requested, including:

(i) a listing of the applicant's anticipated income and expenditures (rounded to the nearest $100) during its current fiscal year, and

(ii) A listing of the total assets and liabilities of the applicant; and

(10) A list of all proceedings of the Federal government in which the applicant has participated during the past year (including the interest represented and the nature and extent of the contribution made) and any amount of financial assistance received from the Federal government in connection with those proceedings.

§ 304.6 Processing of applications.

(a) Applications will be processed by an Evaluation Committee composed of the Managing Director, the Director of the Office of Economic Analysis, and the General Counsel, or their respective delegates. Whenever a member of the Evaluation Committee is participating in the proceeding, he or she will not participate in the evaluation of applications for compensation for participation in that proceeding. The member will instead delegate the position on the Committee to a person who is not and will not become substantively involved.

(b) If the Board had invited applications for compensation in a particular proceeding, the Evaluation Committee will act on the applications as soon as practicable after the closing date announced in the invitation. Otherwise, the Committee will act on an application as soon as practicable after it is received. In accordance with the criteria set out in § 304.7, the Committee will approve or disapprove the application, in whole or in part.

(c) The Evaluation Committee may consider the recommendations of Board staff members whose views appear relevant to the proceeding. The Committee's determination whether to select any applicant who satisfies the criteria of § 304.7(a) is discretionary. In addition to the criteria of § 304.7, the Committee may consider—

(1) The importance of the applicant's proposed participation in light of the funding available for compensation under this part; and

(2) Whether the application is premature, in light of the stage that the proceeding has reached.

(d) A written decision of the Evaluation Committee will be mailed to each applicant for compensation in the proceeding. The decision will explain the reasons for the Committee's disposition of the application and the amount and computation of any compensation authorized. Copies of each application and decision will be filed in the docket for the proceeding and in a "Compensation of Participants" file in the Public Reference Room.

(e) The Committee and applicants may also communicate informally. The Committee will file copies of any written communication in the docket and in the "Compensation of Participants" file. It will similarly file a summary of any oral communication, and mail a copy to the applicant.

(f) The Committee may, for a good reason given by an applicant, reconsid-

er the disapproval of all or part of an application.

(g) After the beginning of its participation, an applicant may request a supplemental authorization to enable it to complete its work. The committee may approve the request if the applicant shows that, because of an unforeseeable change in circumstances, it or the Committee seriously underestimated the probable costs of participation. Such requests will not be approved for work already performed or for costs already incurred.

(h) The Evaluation Committee may ask the Board or the relevant Board employee, as appropriate, to extend any filing period for all parties or postpone any hearing, in order to afford applicants adequate time to prepare their presentations. The Committee, in deciding whether to make such a request, and the Board or Board employee, in considering whether to agree to it, shall balance the Board's need to give time to applicants against the need for a speedy resolution of the proceeding.

§ 304.7 Eligibility and allocation criteria.

(a) The Evaluation Committee may approve an application, in whole or in part, only if it finds that:

(1) The applicant represents an interest whose representation can reasonably be expected to contribute substantially to a full and fair determination of the proceeding, in light of the number and complexity of the issues presented, the importance of public participation, and the need for representation of a fair balance of interests;

(2) Participation by the applicant is reasonably necessary to represent that interest adequately;

(3) It is reasonably probable that the applicant can competently represent the interests it espouses within the time available for the proceeding;

(4) The applicant does not have available, and cannot reasonably obtain in other ways, enough money to participitate effectively in the proceeding without compensation under this part; and

(5) The applicant's economic interest in the outcome of the proceeding is small in comparison with the cost of effective participation, except that if the applicant is a group or organization, the Committee need only find that the economic interest of a substantial majority of its individual members is small in comparison with the cost of effective participation.

(b) In determining whether an applicant would be unable to participate effectively without compensation, the Committee will require the applicant to demonstrate that its current assets (cash, accounts receivable, and marketable securities that are not in reserves, budgeted for other use, or otherwise restricted for withdrawal) less current liabilities, adjusted by any anticipated operating loss or profit over the relevant year, do not equal or exceed the amount need for participation, subject to the following:

(1) Salaries paid to employees of an applicant in excess of salaries paid to Board employees for comparable services will be disallowed, and

(2) An individual applicant whose gross income is less than $30,000 will be presumed unable to participate effectively without compensation.

(c) The committee may waive the "small economic interest" requirement of paragraph (a)(5) of this section if it finds that the applicant's participation in the proceeding would be exceptionally important.

(d) If multiple applications that satisfy the criteria of paragraph (a) of this section seek to represent the same or similar interest, but contain significant differences in viewpoint, approach, or proposals, the Evaluation Committee may partially or completely approve one or more of these applications.

(e) In selecting among applications representing the same or similar interests, the Evaluation Committee will consider and compare the applicants' skills and experience and the contents of their proposals. In particular, the Committee will consider and compare:

(1) The applicants' experience and expertise in Civil Aeronautics Board matters generally and in the substance of the proceeding particularly;

(2) The applicants' prior general performance and competence;

(3) Evidence of the applicants' relations to the interest they seek to represent;

(4) The specificity, novelty, relevance, and significance of the matters the applicants propose to develop and present; and

(5) The public interest in promoting new sources of public participation.

§ 304.8 Compensable costs and services.

(a) The following costs and services are compensable under this part:

(1) Salaries or other remuneration for services performed by participants or their employees;

(2) Fees for consultants, experts, contractual services, and attorneys;

(3) Transportation costs;

(4) Travel-related costs such as lodging, meals, and telephone calls; and

(5) All other costs reasonably incurred.

(b) Compensation is limited to reasonable services and costs of participation that have been authorized and actually incurred. In no case, however, will compensation be greater than salaries paid by the Board for comparable services or the amounts normally paid by the Board for comparable goods.

§ 304.9 Payments to participants.

Payment of compensable expenses for approved applications will be made by the Board within 90 days after the applicant has submitted a completed claim, including bills, receipts, or other proof of costs incurred or services performed. For good cause shown, partial payments may be made as a applicant's work progresses.

§ 304.10 Audits.

The Board and the General Accounting Office shall have access for the purposes of audit to any pertinent records of a participant receiving compensation under this part. The Board may by order establish additional guidelines for accounting, recordkeeping, and other procedures to be followed by participants.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-8818 Filed 4-3-78; 8:45 am]

[6750-01]

FEDERAL TRADE COMMISSION

[16 CFR Part 13]

[File No. 722-3213]

HIKEN FURNITURE CO.

Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Provisional consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this provisionally accepted consent agreement, among other things, would require a Belleville, Ill. furniture retailer to cease using bait and switch tactics, and misrepresenting or failing to make relevant disclosures regarding prices, products, service, cooling-off periods, cancellation and refund rights and the availability of arbitration to resolve consumer disputes. The order would further prohibit the firm from using unfair or deceptive means to induce payment from allegedly delinquent debtors; and require the firm to provide, in the extension of credit, the materials and disclsoures required by Federal Reserve System regulations. Additionally, the firm would be required to maintain particular records and furnish its advertising media with copies of the Commission's press release setting forth the terms of the order.

DATE: Comments must be received on or before June 1, 1978.

ADDRESS: Comments should be directed to: Office of the Secretary, Fed-

eral Trade Commission, 6th St. and Pennsylvania Ave. NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT:

Paul W. Turley, Director, Chicago Regional Office, Federal Trade Commission, 55 East Monroe St., Suite 1437, Chicago, Ill. 60603, 312-353-4423.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and provisionally accepted by the Commission, has been placed on the public record together with material submitted to the Commission that is not exempt from public disclosure under the Freedom of Information Act, for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's rules of practice (16 CFR 4.9(b)(14)).

[File No. 722-3213]

HIKEN FURNITURE CO.

AGREEMENT CONTAINING CONSENT ORDER TO CEASE AND DESIST

The Federal Trade Commission having initiated an investigation of certain acts and practices of Hiken Furniture Company, a corporation, and it now appearing that Hiken Furniture, a corporation, hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed by and between Hiken Furniture Co., by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Hiken Furniture Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois with its office and principal place of business located at 218 West Main Street, Belleville, Ill. 62220.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become a part of the official record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released; and such acceptance may be withdrawn by the Commission if, within thirty (30) days after the sixty (60) day period, comments or views submitted to the Commission disclose facts or considerations which indicate that the order contained in the agreement is inappropriate, improper, or inadequate.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and affect and shall become final and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby, and it is understood that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order, and that it may be liable for a civil penalty in the amount provided by law for each violation of the order after it becomes final.

ORDER I

It is ordered, That respondent Hiken Furniture Co. a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division, or any other device in connection with the purchasing, advertising, offering for sale, sale and distribution of furniture and appliances, or any other products, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using, in any manner, a sales plan, scheme, or device wherein false, misleading, or deceptive statement or representations are made in order to obtain leads or prospects for the sale of merchandise.

2. Making representations, directly or indirectly, orally or in writing, purporting to offer merchandise or services for sale when the purpose of the representation is not to sell the offered merchandise or services but obtain leads or prospects for the sale of other merchandise or services at higher prices.

3. Discouraging in any manner the purchase of any merchandise or services which are advertised or offered for sale as part of a scheme to sell other merchandise.

4. Failing to maintain and produce for inspection and copying for a period of three years adequate records to document for the entire period during which each advertisement was rum and for a period of six weeks after the termination of its publication in press or broadcast media.

a. The cost of publishing each advertisement including the preparation and dissemination thereof;

b. The volume of sales made of the advertised product or service at the advertised price;

c. A computation of the net profit from the sales of each advertised product or service at the advertised price, based upon respondent's normal method of computation.

5. Using the words "Sale", or "Save", "Extra Savings", or any other words of similar import or meaning not set forth specifically herein, unless the immediately preceding price at which bonafide sales have been made of the merchandise being offered for sale is disclosed or can be readily ascertained by disclosure of the stated dollar or percentage price and the price of said merchandise constitutes a recent reduction, in an amount not so insignificant as to be meaningless, from the immediately preceding price or unless a disclosure is made that such merchandise was offered for sale at the immediately preceding price in the recent regular course of respondent's business, and that no sales were made at the price or any other price in the recent past.

6. (a) Representing, directly or indirectly, orally or in writing, that by purchasing any of respondent's merchandise, customers are afforded savings amounting to the difference between respondent's stated price and respondent's former price unless the

former price is respondent's immediately preceding price for the advertised merchandise and bonafide sales have been made by respondent at the price in the recent past or unless a disclosure is made that said merchandise was offered for sale at the former price for a reasonably substantial period of time in the recent regular course of respondent's business and that no sales were made at the price or at any other price in the recent past.

(b) Representing, directly or indirectly, orally or in writing that by purchasing any of the respondent's merchandise, customers are afforded savings between respondent's stated price and a compared price for said merchandise in respondent's trade area unless respondent's merchandise and the nature of the compared price are explicitly identified in advertising and at the point of sale through the use of shelf tags or similar means and such merchandise is generally available in principal retail outlets in the trade area at the compared price or some higher price.

(c) Representing, directly or indirectly, orally or in writing that by purchasing any of respondent's merchandise, customers are afforded savings amounting to the difference between respondent's stated price and a compared value price for comparable merchandise unless the compared value price is explicitly identified in advertising and at the point of sale through the use of shelf tags or similar means and respondent has in good faith conducted a market survey or obtained a similar representative sample of prices for comparable merchandise of like grade and quality in its trade area to establish that the principal retail outlets in the trade area regularly sell comparable merchandise of like grade and quality at the compared value price in the regular course of their business.

7. Failing to maintain and produce for inspection or copying, for a period of three years, adequate records (a) which disclose the facts upon which any savings claims, sale claims and other similar representations are set forth in Paragraphs Five and Six of this order are based, and (b) from which the validity of any savings claims, sale claims, and similar representations can be determined.

8. Representing, directly or indirectly, orally or in writing that respondent has a "Huge Selection", "Carloads", or any given number of furniture sutes unless respondent has the stated huge selection or number of furniture suites available for immediate sale and delivery; or misrepresenting in any manner the colors, style, kind or quantity of furniture in stock and available for sale or delivery.

9. Representing, directly or indirectly, orally or in writing, the immediate availability of any merchandise for sale when such merchandise is not in stock and available in quantities sufficient to meet reasonably anticipated demands for sale to the public at or below the advertised price for the period in which the prices are advertised to be effective.

10. Failing to make full disclosure either in its advertising or at the time of sale and prior to consummation of the sale that in addition to the price quoted in respondent's advertising, certain other charges, as applicable, are made, such as, delivery, set-up or assembly, service, and warranty charges.

11. Failing to disclose clearly and conspicuously within each advertisement for an advertised product each reservation, if any, as to suitability or durability of such advertised product for reasonable usage by the customers who may buy such product or service.

12. Representing, directly or by implication, that any of respondent's offers to sell merchandise are limited as to time or restricted or limited in any other manner, unless such represented limitations or restrictions are actually in force and in good faith adhered to.

13. Using the terms "Danish", "French" or "Spanish", or any other unqualified terms of similar import or meaning not set forth specifically herein, orally or in writing, to describe respondent's furniture when such furniture is of domestic origin, unless a clear and conspicuous disclosure is made in advertising and on the furniture that such furniture was manufactured in the United States by means of such statements as "Made In U.S.A." or "manufactured by" followed by the name and address of the domestic manufacturer.

14. Representing, directly or indirectly, orally or in writing that the respondent's merchandise is "soft pecan", "walnut", or using any other terms of comparable import or meaning not set forth specifically herein, to describe respondent's furniture, unless a clear and conspicuous disclosure is made in advertising and on furniture that such terms are merely descriptive of the color and-or grain design or other simulated finish that is applied to the exposed surfaces of such furniture.

15. Using any wood names or any names that suggest wood, orally or in writing, to describe any materials simulating wood in respondent's furniture, unless a clear and conspicuous disclosure is made in advertising and on the furniture that such wood names are merely descriptive of the color and/or grain design or other simulated finish that is applied to the exposed surfaces of such furniture.

16. Representing, directly or indirectly, orally or in writing, that purchasers of respondent's merchandise are granted easy or instant credit terms, by respondent; or misrepresenting in any manner, the amount, type, extent of any other facet of the credit terms respondent arranges or may arrange for its purchasers.

17. Using the word "free" or any other word or words of similar import or meaning in connection with the sale, offering for sale or distribution of respondent's merchandise or services in advertisements or other offers to the public, as descriptive of an article of merchandise or service:

(a) When all the conditions, obligations, or other prerequisites to the receipt and retention of the "free" article of merchandise or service offered are not clearly and conspicuously set forth at the outset so as to leave no reasonable probability that the terms of the offer might be misunderstood.

(b) When, with respect to any article of merchandise or service required to be purchased in order to obtain the "free" article or service, the offerer either (i) Increases the ordinary and usual price of such merchandise or service or (ii) Reduces the quality or (iii) Reduces the quantity or size thereof.

18. Offering gift merchandise to persons complying with certain conditions unless, in every instance, such merchandise is given to the persons complying with such conditions.

19. Using pictorial representations of two or more items of furniture in conjunction with a stated price when all of the furniture in the pictorial representations is not being offered at the stated price, unless a disclosure is made in immediate conjunction and with equal prominence that all of the illustrated furniture is not being offered at the stated price and that an additional charge is made for certain items that are clearly identified in the illustrations.

20. Offering merchandise for sale by means of any form of pictorial advertisement when such merchandise is not in stock and available in quantities sufficient to meet reasonably anticipated demands for sale to the public at or below the advertised price for the period in which the prices are advertised.

21. Failing to make a clear and conspicuous disclosure on furniture, or on a tag or label prominently attached thereto, that veneers, plastics or other materials having the appearance of wood, leather, slate or marble have been used in the manufacture of such merchandise; or failing to make a clear and conspicuous disclosure of any material facts relating to the true composition of furniture where materials or products that simulate other materials or products are used in the manufacture of such furniture.

22. Failing to inform, orally, all customers at the time of sale and provide

in writing on the face of all order forms, sales contracts and invoices executed by customers with such conspicuousness and clarity as is likely to be read and understood, that, if furniture and/or appliances are delivered in a defective or damaged condition, the customer has the right to have such merchandise replaced or repaired with no additional cost to the customer by notifying respondent, in writing, within ten (10) days of the receipt of such damaged or defective merchandise and to cancel the contract and obtain a refund of all monies where respondent refuses or fails to make such replacement or repairs: *Provided, however,* That the provisions of Paragraphs 22 and 23 of the order shall not apply to merchandise sold "as is," conspicuously designated as such on order forms, sales contracts and invoices executed by the customers who have knowledge of damage to, or defects in particular merchandise and have given written consent to purchasing same in its stated form.

23. Failing to replace or repair merchandise delivered in a defective or damaged condition with no additional cost to customers who have requested replacement or repair in writing within ten (10) days from the date of actual delivery of such merchandise, such replacement or repair to be fully, satisfactorily and promptly performed in accordance with Paragraph 24 of this Order I; *Provided, however,* That in lieu of replacement and repair of defective or damaged merchandise, respondent may cancel the contract with immediate refund of all monies to customers who have requested such replacemnt or repair in writing. In cases where replacement or repairs have been made by respondent, the customer may cancel the contract with a refund of all monies by notification to respondent in writing within ten (10) days from the date of actual delivery or redelivery of any replacement or repaired merchandise that is itself defective or damaged.

24. Failing on receipt of a written notice of defective or damaged merchandise to investigate such complaints forthwith and complete all repairs within three (3) weeks from the date of such notice or to make full replacements within forty (40) days of the receipt of such notice. In all other cases of actual delivery or redelivery of any replacement or repaired merchandise that is itself defective or damaged, respondent shall refund immediately all monies to customers who have requested contract cancellation in writing, as provided for in this order, or obtain the voluntary written consent of the customer for replacement or repair within one (1) week of the receipt of the customer's request for cancellation; shall complete all repairs pursuant to a written consent for repairs, within two (2) weeks from the date of such written consent and shall make full replacements, pursuant to a written consent for replacement, within thirty (30) days from the date of such written consent.

25. Failing to notify the customer, orally and in writing, and at least five (5) business days prior to the scheduled completion date, that respondent is unable to complete repairs or replacement within the time specified by this order and to cancel the contract with a full refund of all monies to the customer within one week, or in lieu thereof and at the option of the customer, to obtain the customer's voluntary written consent for an extension of the data set for completion, which shall be a date by which respondent actually expects to complete performance.

26. Failing to maintain and produce for inspection or copying, for a period of two (2) years, adequate records which disclose the facts pertaining to the receipt, handling and disposition of each and every written communication from a customer requesting contract cancellation, refund, replacement or repair.

27. Failing, if the respondent and a customer are unable to agree upon a settlement of any controversy involving the delivery or repair of any damaged or defective furniture, appliances, or other merchandise, or the failure to replace or repair such damaged or defective merchandise or to make cancellations with refunds with respect thereto, then, at the option of the customer, such customer shall have the right to submit the issue to an impartial arbitration procedure entailing no manadatory administrative cost or filing fee to the consumer, which shall be conducted in accordance with the arbitration procedures annexed to this order, as Appendix "A", and the procedures for arbitration adopted in Appendix "A" are to be considered as incorporated within the terms of this order.

28. Failing to comply with and abide by any award or decision rendered pursuant to the arbitration procedures of paragraph 27.

29. Preventing arbitration pursuant to any provision of this order by reason of having obtained a default judgment against any customer in an action for money allegedly due the respondent or its assignees.

30. Failing to provide adequate notification to customers of their right to submit such controversy to arbitration or failing to incorporate the following statement on the face of all sales contracts with such conspicuousness and clarity as is likely to be read and understood by customers.

NOTICE

Any controversy arising out of or relating to this contract involving the delivery or repair of any damaged or defective furniture, appliances or other merchandise, or the failure to replace or repair such damaged or defective merchandise or to make cancellations with refunds with respect thereto shall be settled, at the option of the customer, by arbitration. Such arbitration shall be conducted in accordance with Arbitration Rules of the Arbitration Tribunal of the Better Business Bureau of Greater St. Louis, Inc. Consumers seeking arbitration should contact the Better Business Bureau of Greater St. Louis, Inc., whose offices are located at 915 Olive Street, Fourth Floor, St. Louis, Mo. 63101, telephone 314-241-3100. Under Missouri and Illinois law, arbitration, if undertaken, is legally binding and final.

31. Failing to change the instructions, contained in the Notice set forth in Order I, paragraph 30, as to how to secure arbitration if circumstances require.

32. Inducing or causing purchasers or prospective purchasers of respondent's products, installations or services to sign blank or partially filled in completion certificates or other legal instruments or documents; or misrepresenting, in any manner, the true nature or effect of such legal instruments or documents.

33. Contracting for any sale whether in the form of trade acceptance, conditional sales contract, promissory note, or otherwise which shall become binding on the buyer prior to midnight of the third day, excluding Sundays and legal holidays, after the date of execution.

34. Failing to furnish the buyer with a fully completed receipt or copy of any contract pertaining to such sale at the time of its execution, which is in the same language, e.g., Spanish, as that principally used in the oral sales presentation and which shows the date of the transaction and contains the name and address of the seller, and in immediate proximity to the space reserved in the contract for the signature of the buyer or on the front page of the receipt if a contract is not used and in bold face type of a minimum size of 10 points, a statement in substantially the following form:

You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right.

35. Failing to furnish each buyer, at the time he signs the sales contract or otherwise agrees to buy consumer goods or services from the seller, a completed form in duplicate, captioned "Notice of Cancellation", which shall be attached to the contract or receipt and easily detachable, and which shall contain in ten point bold face type the following information and statements in the same language, e.g., Spanish, as that used in the contract:

NOTICE OF CANCELLATION

(enter date of transaction)

_____

(date)

You may cancel this transaction, without any penalty or obligation, within three business days from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within 10 business days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be cancelled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale; or you may if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If you do make the goods available to the seller and the seller does not pick them up within 20 days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller, or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice or any other written notice, or send a telegram to ————, at (address of seller's place of business) ————, not later than midnight of (Date) ————. I hereby cancel this transaction.

_____

(Date)

_____

(Buyer's Signature)

36. Failing, before furnishing copies of the "Notice of Cancellation" to the buyer, to complete both copies by entering the name of the seller, the address of the seller's place of business, the date of the transaction, and the date, not earlier than the third business day following the date of the transaction, by which the buyer may give notice of cancellation.

37. Including in any sales contract or receipt any confession of judgment or any waiver of any of the rights to which the buyer is entitled under this order including specifically his right to cancel the sale in accordance with the provisions of this order.

38. Failing to inform each buyer orally, at the time he signs the contract or purchases the goods or services, of his right to cancel.

39. Failing or refusing to honor any valid notice of cancellation by a buyer and within ten (10) business days after the receipt of such notice, to (a) refund all payments made under the contract or sale; (b) return any goods or property traded in, in substantially as good condition as when received by the seller; (c) cancel and return any negotiable instrument executed by the buyer in connection with the contract or sale and take any action necessary or appropriate to terminate promptly any security interest created in the transaction.

40. Negotiating, transferring, selling, or assigning any note or other evidence of indebtedness to a finance company or other third party prior to midnight of the fifth business day following the day the contract was signed or the goods or services were purchased.

41. Failing, within ten (10) business days of receipt of the buyer's notice of cancellation, to notify him whether the seller intends to repossess or to abandon any shipped or delivered goods.

ORDER II

It is further ordered, That respondent Hiken Furniture Company, a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or any other device, in connection with the collection of, or attempt to collect, accounts in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, or causing to be represented by any means, directly or indirectly, that respondent has instructed, is instructing, or will instruct an attorney to file suit against an alleged debtor unless the alleged debt is immediately paid in full or a specified amount is paid thereon unless the respondent has already instituted the aforesaid suit, or do so in fact, if the alleged debt is not immediately paid in full or the specified amount is not paid theron.

2. Representing by any means, directly or indirectly, that:

(a) Legal action has been taken against the debtor; or

(b) Legal action is being taken against the debtor; or

(c) Legal action will be takne against the debtor unless the respondent has already instituted said legal action, or does so in fact, if the alleged debt is not immediately paid in full or the specified amount is not paid thereon.

3. Informing a debtor of a creditor's right after judgment without disclosing at the same time that no judgment may be entered against the debtor unless the debtor has first been given notice and an opportunity to appear and defend himself in a court of law.

4. Representing, directly or indirectly, by any means to a debtor that it is impossible to escape a judgment.

5. Failing to give notification of the commencement of legal action by respondent against a customer by mailing a summons and complaint to such customer's last known address, and failing to obtain from the post office a certificate of such mailing. Such notice shall be in addition to any other notification or service required by law, practice or custom. Such summons and complaint to be sent by first class mail by respondent or its attorney with instructions on the face of the envelope "Do not forward. Address Correction Requested". In the event that such mail is returned as undeliverable by the Post Office or if the residence address of the defendant is unknown, the summons is to be mailed to the customer, care of the employer or place or employment of the customer if known, in a sealed envelope not indicating on the outside thereof, directly or indirectly by the return address or otherwise, that the communication is from an attorney or concerns an alleged debt.

ORDER III

It is further ordered, That respondent Hiken Furniture Company, a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with any extension of consumer credit, or any advertisement to aid, promote or assist, directly or indirectly, any extension of consumer credit, as "consumer credit" and "advertisment" are defined in Regulation Z (12 CFR Part 226) of the Truth in Lending Act (Pub. L. 90-321, 15 U.S.C. 1601 et seq.), do forthwith cease and desist from:

1. Failing to furnish to the customer, before the transaction is consummated, a duplicate of the instrument or other statement containing the disclosures requred by § 226.8 of Regulation Z, as required by § 226.8(a) of Regulation Z.

2. Failing to disclose the conditions entitling a customer to a partial refund of the finance charge as required by § 226.8(b)(7) of Regulation Z.

3. Failing to accurately disclose the date on which the finance charge begins to accrue, as prescribed by § 226.8(b)(1) of Regulation Z.

4. Failing to accurately state the "annual percentage rate", as prescribed by § 226.8(b)(2) of Regulation Z.

5. Failing to disclose the "total of payments", as prescribed by § 226.8(b)(3) of Regulation Z.

6. Failing to accurately disclose the number, amount, and due dates, or periods of payment, scheduled to repay the indebtedness, as prescribe by § 226.8(b)(3) of Regulation Z.

7. Failing to state the "unpaid balance of cash price", as prescribed by § 226.8(c)(3) of Regulation Z.

8. Failing to disclose the "amount financed", as prescribed by § 226.8(c)(7) of Regulation Z.

9. Failing to disclose the "deferred payment price", as prescribed by § 226.8(c)(8)(ii) of Regulation Z.

10. Failing to itemize and include in the finance charge for purposes of disclosure of the finance charge and computation of the annual percentage rate, any and all charges for risk of loss insurance unless the customer was given a clear, conspicuous and specific written indication of the cost of such insurance coverage from respondent and stating that the customer may choose the source through which the insurance is to be obtained as prescribed by § 226.4(a)(6) of Regulation Z.

11. Failing to itemize and include in the finance charge, for purposes of disclosure of the finance charge and computation of the annual percentage rate, any and all charges or premiums for credit life, accident, or health insurance unless respondent has obtained a specific dated and separately signed affirmative written indication of the customer's desire for such insurance coverage as prescribed by § 226.4(a)(5)(ii) of Regulation Z.

12. Failing, in any consumer credit transaction or advertisement, to make all disclosures determined in accordance with §§ 226.4 and 226.5 of Regulation Z, in the manner, form and amount required by §§ 226.6, 226.7, 226.8, 226.9 and 226.10 of Regulation Z.

It is further ordered, That respondent shall forthwith cease and desist from representing, orally, directly or by implication that respondent offers a guarantee or warranty of any kind and from offering a warranty of any kind in writing that does not conform to all the requirements of the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act of 1975, 15 U.S.C. 2301.

It is further ordered, That for a period of one year respondent post in a prominent place in each sales room or other area wherein respondent sells furniture or other products and services a copy of this cease and desist order with a notice that any customer or prospective customer may receive a copy on demand.

It is further ordered, That respondent forthwith distribute a copy of this order to each of its operating divisions or departments.

It is further ordered, That respondent prominently display the following notice in two or more locations in that portion of respondent's business premises most frequented by prospective customers, and in each location where customers normally sign consumer credit documents or other binding instruments. Such notice shall be considered prominently displayed only if so positioned as to be easily observed and read by the intended individuals:

NOTICE TO CREDIT CUSTOMERS

If the dealer is financing or arranging the financing of your purchase, you are entitled to consumer credit cost disclosures as required by the Federal Truth in Lending Act. These must be provided to you in writing before you are asked to sign any document or other papers which would bind you to such a purchase.

This notice required by order of the Federal Trade Commission.

It is further ordered, That no provisions of this order shall be construed in any way to annul, invalidate, repeal, terminate, modify or exempt respondent from complying with agreements, orders or directives of any kind obtained by any other agency or acts as a defense to actions instituted by municipal or state regulatory agencies. No provision of this order shall be construed to imply that any past or future conduct of respondent complies with the rules and regulations of, or the statutes administered by the Federal Trade Commission.

It is further ordered, That respondent deliver a copy of this order to cease and desist to all present and future personnel of respondent engaged in the consummation of any consumer credit transaction or in any aspect of preparation, creation or placing of advertising, and to all personnel of respondent responsible for the sale or offering for sale of all products covered by this order, and that respondent secure a signed statement acknowledging receipt of said order from each person.

It is further ordered, That respondent, for a period of one year from the effective date of this order, shall furnish each newspaper or other advertising medium which is utilized by the respondent to obtain leads for sale of merchandise, or to advertise, promote, or sell merchandise, with a copy of the Commission's News Release setting forth the terms of this order.

It is further ordered, That respondent notify the Commission at least 30 days prior to any proposed change in the respondent corporation such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That in the event respondent merges with another corporation or transfers all or a substantial part of its business or assets to any other corporation or to any other person, said respondent shall require such successor or transferee to file promptly with the Commission a written agreement to be bound by the terms of this order; *Provided,* That if said respondent wishes to present to the Commission any reasons why said order should not apply in its present form to said successor or transferee, it shall submit to the Commission a written statement setting forth said reasons prior to the consummation of said successions or transfer.

APPENDIX "A".—*Consumer Arbitration Rules*

DEFINITIONS

A. *Arbitration* is the process by which two or more parties select and authorize an impartial party or panel to resolve their dispute.

B. *Consumer disputes* are any disagreements between respondent and his customer involving the delivery or repair of any damaged or defective furniture, appliances, or other merchandise, or the failure to replace or repair such damaged or defective merchandise or to make cancellations with refunds with respect thereto. If during the course of any proceeding conducted pursuant these Rules, it appears to the Arbitrator that the issues before him do not coincide with this definition, he is authorized to suspend the hearing permanently, narrow the issues to those which fall within this definition, or take whatever other action is deemed necessary.

C. *Administrator* refers to the Better Business Bureau of Greater S. Louis, Inc.

D. *Parties* to arbitration are those persons necessary to resolve a dispute, usually the businessman and his customer.

E. *Arbitrator* is the individual or panel which makes the final decision or award.

APPLICATION OF RULES

These Rules shall apply to consumer disputes submitted to the Administrator for settlement by arbitration. The Parties shall be deemed to have adopted these Rules whenever they have agreed in writing to arbitrate their dispute. These rules and any amendment thereof shall apply to the form obtaining at the time the arbitration is initiated.

INITIATING ARBITRATION

If it appears that efforts to resolve a dispute informally have been exhausted, the Bureau may suggest or the Parties may request that the dispute be arbitrated. The Administrator will then prepare an Arbitration Agreement, on which the issues in dispute are listed, and transmit an identical Agreement to both Parties. If the Parties agree with the listed issues and further agree to be bound by arbitration, they will sign the Agreement and return it to the Administrator within five (5) days after receipt. If either Party disagrees with the issues presented, he shall return a corrected version of the issues to the Admninistrator. The Administrator shall resolve any conflict of issues and, if necessary, send amended Arbitration Agreements for signature by the Parties. Failure to return a signed Arbitration Agreement will be considered as a rejection of arbitration. Upon receipt of signed Agreements from the Parties, the Administrator shall commence procedures to arbitrate a dispute pursuant to these Rules.

The administrator may require the posting of a nominal performance bond by either of the Parties to assure their presence at the hearing. Such a bond, if posted, shall be returned to the Party when he presents himself at the hearing.

SELECTION OF ARBITRATOR

The Administrator shall maintain a pool of volunteers from which the Arbitrator shall be selected. This pool of volunteers should relect membership of the total community. The following methods of selecting Arbitrators may be used:

A. *The single arbitrator.* A single Arbitrator shall be used in all cases where the Arbi-

trator has been selected and agreed upon by the Parties from the established pool of Arbitrators. Upon receipt of written Agreements to binding arbitration by the Parties, the Administrator shall provide the Parties with an identical list of five Arbitrators chosen from the pool, together with brief biographies of each. Each Party shall have five (5) days after receipt of this list to cross off names of those deemed unacceptable to him and rank the remaining names in descending order of preference, placing No. 1 after name of first choice, etc. The Administrator shall select an Arbitrator from the top three choices of the Parties. If preferences of the Parties do not overlap, the Adminstrator may either send the Parties a new list of Arbitrators or set up a panel, described in Section B., below.

B. *Three-man panel.* Upon demand of either Party to a dispute involving amounts exceeding $1,000.00 or when the Parties cannot agree upon a single Arbitrator, each Party selects from the pool an Arbitrator representing his first choices. The two Arbitrators so selected shall select from the pool a third Arbitrator who has not been previously rejected by either Party. The person so selected shall serve as chairman and convenor of the panel.

FACILITIES AND COSTS

Facilities for the holding of hearings and maintenance of records shall be provided by the Administrator. Cost of stenographic services, record of proceedings and individual witness fees shall be borne by the respondent. The Administrator will endeavor to provide a panel of expert witnesses and testing laboratories willing to donate services.

COMMUNICATION AND SERVING OF NOTICES

All correspondence should be sent by mail to the Administrator. There shall be no direct communication between the Parties and the Arbitrator regarding the dispute, except at the hearing and in the presence of the other Party, or with the other Party's written permission. All correspondence from the Parties to the arbitrator and vice versa shall be sent through the Administrator. Any Party agreeing to arbitration pursuant to those Rules shall be deemed to have consented that any notices or other communication relevant to arbitration proceedings may be served by mail addressed to the Party or his attorney at his last known address. The Administrator shall notify the Parties of the date, time and place of the arbitration hearing and shall forward to the Parties a copy of the Award by registered mail, return receipt requested.

NOTICE OF APPOINTMENT

Notice of Appointment shall be mailed to the Arbitrator by the Administrator along with a copy of these Rules. The signed appointment form together with disclosures of any relationships to Parties shall be filed with the administrator prior to the opening of the first hearing.

DISCLOSURE BY ARBITRATORS; FILLING VACANCIES

Any person selected to serve as an Arbitrator shall divulge, in his signed acceptance of appointment any financial, competitive, professional, family, or social relationship, however remote, with the Parties to the dispute or disputes he is assigned to arbitrate. All doubts should be resolved in favor of disclosure. Any such disclosures shall be transmitted to the Administrator who shall provide them to the Parties with a waiver/objection form. If a Party objects or if an arbitrator is unable or unwilling to serve, the administrator shall assist the Parties, pursuant to Section 5 of these rules, in selecting or appointing a replacement.

REPRESENTATION BY COUNSEL

A Party may (but need not) be represented by counsel. A corporation may be represented by any officer or employee designated by the coproration. The Administrator and the opposing Party shall be furnished the name and address of any attorney for any Party at least five (5) days prior to the date of the hearing set before the Arbitrator.

HEARING DATES; NOTICES; WAIVER OF NOTICE

Upon acceptance of an Arbitrator, the Administrator shall, within three days, establish a date, time and place for the oral hearing, with due regard for the convenience of the Parties and with the agreement of the Arbitrator. Once determined, this information shall be communicated to the Parties at least seven days in advance of the date set for the hearing, utilizing the Notice of Hearing Form. Parties objecting to the date, time or location designated should promptly notify orally and in writing the administrator or otherwise be deemed to have waived such objections. Appearance of the Party at hearings shall automatically constitute waiver of notice.

WAIVER OF ORAL HEARINGS

The Parties may agree in writing to waive oral hearings and to permit arbitration based on submission of written arguments and documentary evidence. Where oral hearings are waived, the Arbitrator shall determine the deadlines for submitting evidence. In such instances, the date for the Award shall be fixed at 10 days after receipt of all evidence.

INSPECTION BY ARBITRATOR

At the initiation of arbitration, either Party may request an inspection or a hearing at a site appropriate for inspection. The Arbitrator has the absolute discretion to inspect the product or premises involved. If the inspection is to be conducted separately from the hearing, the Administrator shall provide notice to the Parties and invite their presence. The Administrator shall also arrange for the presence of a technical expert at the inspection at the discretion of the Arbitrator. If possible, inspections should be conducted prior to the hearing.

ATTENDANCE AT PROCEEDINGS

Unless otherwise agreed by the Parties in writing only those persons party to or having a direct interest in the dispute are entitled to attend hearings. The Arbitrator shall have the discretion to require any witness to absent himself from the hearing room when the Arbitrator deems his presence to be unnecessary or undesirable.

ABSENCE OF A PARTY

Arbitration hearings may proceed in the absence of any Party who, after due notice of the hearing, fails to appear, but such absence shall not be the basis for a default judgment. Rather, the attending Party shall submit evidence and the Arbitrator may render an Award based thereon.

TRANSCRIPT OF HEARING

The Administrator shall provide stenographic services or otherwise record the proceedings upon the request of any Party, provided, however, that the cost of such services be borne by the requesting Party and that all Parties be provided access to such record. In all cases, the Arbitrator shall see that a Record of Hearing Form is completed at the close of each hearing.

INTERPRETERS

The Administrator shall provide without cost an Interpreter when any Party expresses the need for such and when the Arbitrator deems it necessary.

OATHS

The Arbitrator, the Parties, and any witnesses at a hearing shall be placed under oath.

ORDER OF PROCEEDINGS AT THE HEARING

A. After the oaths are administered, the Customer shall summarize his position of the dispute, stating briefly what relief he is seeking. The Businessman shall then present a summary of his position and relief sought. B. The Customer shall next present his claim, evidence and witnesses, if any, and submit to questions from the Arbitrator. The Businessman shall then do likewise. Parties may cross-examine.

C. Following the presentation of evidence, each Party shall briefly summarize his position, relating his claims to the proofs and testimony presented.

D. The order of proceedings may vary at the discretion of the Arbitrator in order to assure that full opportunity is given each Party to present all evidence necessary for a decision.

E. The Arbitrator shall declare the hearings closed if no Party has further evidence to offer or witnesses to present.

ADMISSION OF EVIDENCE

The Arbitrator shall judge the relevancy of the evidence and may request additional evidence from either Party. He may refuse to admit evidence deemed irrelevant, stating reasons therefor.

ADDITIONAL PARTIES

In resolving any consumer dispute where someone other than the Businessman and Customer are necessary to resolve all issues, and where such person has agreed to the issues presented and to be bound by arbitration, the Arbitrator shall name him a Party to the dispute and have complete discretion to include such Party in the proceedings.

ADJOURNMENTS

The Arbitrator may adjourn the proceedings upon the request of a Party or his own motion.

METHOD OF DECISION

All matters of concern submitted to an arbitration panel shall be settled by a majority vote, including procedural questions and issues relating to the Award. The decision of the majority shall be deemed to be the decision of all members of the panel, and no dissenting opinion shall be issued.

REOPENING OF HEARING

At the discretion of the Arbitrator, a hearing may be reopened upon his motion or the motion of a Party. If a hearing is reopened,

the time within which an Award must be made is measured from the closing of the last hearing. No hearing shall be reopened after an Award has been made except as provided by state law.

CONSERVATION OF PROPERTY

The Arbitrator may issue such orders as necessary to safeguard property which is the subject matter of arbitration or the position of the Parties.

SUBPOENA POWERS; DEPOSITIONS

The Arbitrator in Missouri and Illinois may compel the attendance of witnesses and the production of relevant documents according to procedures established by state law. The Arbitrator may authorize the taking of depositions of witnesses who are unable to attend the hearing.

AFFIDAVITS

Written affidavits if properly sworn to and notarized will be admissible in lieu of oral testimony, at the discretion of the Arbitrator, and if not objected to by the other Party.

WAIVER OF RULES

Any Party who proceeds after knowledge that a provision of these Rules has not been complied with and who fails to object thereto in writing prior to the time within which the Award is to be made shall be deemed to have waived his right to object.

EXTENSION OF TIME

The Parties may modify any period of time specified in these Rules by mutual agreement and the approval of the Arbitrator. The Arbitrator may extend any time period in these Rules except the period established for making an Award. The Administrator shall notify the Parties of any time extension.

THE AWARD

A. *Time.* The Arbitrator shall render a signed Award notarized if required by law, no later than ten days from the date on which the final hearing is closed. If additional materials are to be submitted beyond the final hearing date, the time for an award shall be ten days from the receipt of such materials. If oral hearing is waived and the Arbitrator requires the submission of necessary written documents, the time for an Award shall be ten days from the receipt of such documents.

B. *Scope.* The Arbitrator may grant relief or remedy within the scope of the Arbitration Agreement deemed just and equitable and allowable under state law.

C. *Modification of Award.* If there is a mistake of fact of miscalculation of figure on the face of the Award, the Administrator shall bring this to the attention of the Arbitrator, at whose discretion the appropriate modification will be effected. The Administrator shall transmit any such modifications to the Parties immediately upon receipt and posting.

D. *Settlement.* If the Parties settle the dispute prior to the rendering of the Award, the Administrator, upon written notice and verification of such settlement, shall terminate the proceedings and so notify the Arbitrator. upon request of the Parties, the Arbitrator may, at his discretion, reduce any such settlement to a written Award.

E. *Form and Filing.* The Award shall be recorded on the Award Form and transmitted to the Administrator. The Administrator shall forward copies of the Award to the Parties and assist with filing the Award in the proper court where such is required under state law. Public disclosure of any Award may not be made unless all Parties agree in writing.

INTERPRETATION OF RULES

The Arbitrator shall interpret these Rules insofar as they relate to his powers and duties. Questions beyond the knowledge or expertise of the Arbitrator shall be referred by the Administrator to the Director, Consumer Arbitration, Council of Better Business Bureaus, Inc.

UNITED STATES OF AMERICA BEFORE FEDERAL TRADE COMMISSION

[File No. 722-3213]

HIKEN FURNITURE CO.

ANALYSIS OF PROPOSED CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission has accepted an agreement to a proposed consent order from Hiken Furniture Company.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested parties and the public. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint in this matter charges Hiken Furniture Company with (1) deceptive and unfair practices in inducing the sale of its household furniture, appliances and services; (2) deceptive and unfair practices in inducing payments purportedly due from delinquent accounts; and (3) failing to make credit cost disclosures required by truth in lending.

The complaint includes charges relating to: bait and switch, false representations of price reductions and/or savings, guarantees, and furniture and service nature and quality; time limits on offers to sell, false representations of foreign origin, false pictorial representations, execution of blank contracts, insufficient time for consideration of purchase, failing to disclose additional charges and/or material facts; false representations to induce payment for furniture and appliances, use of deceptive documents and failing to make credit cost disclosures required by truth in lending.

The order prohibits the employment of the above unfair and deceptive practices, provides for contract cancellation with full refund where defective merchandise is delivered, requires record keeping, requires appropriate disclosures, requires personal notice by registered mail of commencement of legal action, permits customers to raise valid defenses against respondents in all actions by third parties to collect on the notes of such parties and imposes a 3-day cooling off requirement. The order also provides for arbitration of consumer disputes relating to defective merchandise where the company and customer are unable to agree upon a settlement.

It is the conclusion of the staff that the consent order, broad and comprehensive as it is, offers adequate assurance that respondent will not in the future be able to employ unfair or deceptive practices to (1) obtain leads for, or to sell its household furniture, appliances and services, (2) induce payments or to repossess furniture from delinquent accounts, or (3) fail to make appropriate credit cost disclosures as required by truth in lending.

The purpose of the analysis is to facilitate public comment on the proposed order and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

CAROL M. THOMAS,
Secretary.

[FR Doc. 78-8732 Filed 4-3-78; 8:45 am]

[4810-22]

DEPARTMENT OF THE TREASURY

Customs Service

[19 CFR Part 4]

VESSELS IN FOREIGN AND DOMESTIC TRADES

Notice of Proposed Amendments to the Customs Regulations Relating to Foreign Repairs to, and Equipment Purchased for, American Vessels

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the present requirements and procedures for vessel repair entries. The proposed rule would establish substantive and procedural requirements for handling each aspect of a vessel repair entry and is intended to reduce the amount of time needed to process a vessel repair entry.

DATE: Comments must be received on or before May 4, 1978.

ADDRESS: Comments should be sent to the Commissioner of Customs, Attention: Regulations and Legal Publications Division, 1301 Constitution Avenue NW., Washington, D.C. 20229. Comments will be available for public inspection in accordance with section 103.8(b) of the Customs Regulations (19 CFR 103.8(b)), during regular business hours, at the Regulations and Legal Publications Division, Headquarters, U.S. Customs Service, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT:

Jerry C. Laderberg, Carrier Rulings Branch, Carriers, Drawback and Bonds Division, U.S. Customs Service, Washington, D.C. 20229, 202-566-5706.

SUPPLEMENTARY INFORMATION: The U.S. Customs Service proposes to amend sections 4.7(d)(1) and 4.14 of the Customs Regulations (19 CFR 4.7(d)(1), 4.14). These sections deal with substantive and procedural requirements concerning any equipment, repair parts, or material purchased in a foreign country, or any repair expenses incurred in a foreign country, by a U.S. Vessel documented for, or intended to be used in, the foreign or coasting trade, and by U.S. fishing vessels in certain circmustances. Section 466 of the Tariff Act of 1930, as amended (19 U.S.C. 1466), requires these purchases or repair expenses to be declared at the time of the first arrival of the vessel in a port of the United States. Sections 4.7(d)(1) and 4.14 of the Customs Regulations implement this statutory provision.

Discussion of Major Changes Amendments of § 4.7(d)(1) To Permit Declaration by Vessel Owner, Clarify the Status of American Fishing Vessels and Change Citation Reference

Section 4.7(d)(1) of the Customs Regulations requires the master of a U.S. vessel documented for, or intended to be used in, the foreign or coasting trade to declare the purchase of any equipment, repair parts, or material, or the cost of any repairs, in a foreign country, for the vessel. On the other hand, the relevant statute, section 466 of the Tariff Act of 1930, as amended (19 U.S.C. 1466), permits either the owner or the master of the vessel to make the required declaration. The proposed amendments to section 4.7(d)(1) would reflect the statutory language and permit either the owner or master of the vessel to make the required declaration. The proposed amendment makes it clear that 19 U.S.C. 1466 applies to an American fishing vessel documented under a register, a license, or an enrollment and license, whether or not the vessel master or owner has a permit to touch and trade. The proposed amendment would also change the statutory reference in section 4.7(d)(1) from 19 U.S.C. 257 to 19 U.S.C. 1466 to reflect the repeal of sections 3114 and 3115 of the Revised Statutes (19 U.S.C. 257, 258) and the amendment of section 466 of the Tariff Act of 1930 (19 U.S.C. 1466) by Pub. L. 91-654.

Footnote 16b to section 4.7(d)(1) is deleted. Footnote 26 and 27 to section 4.14, are deleted.

Dutiability of Foreign Repairs and Equipment Purchases

Section 4.14(a) of the proposed amendment sets forth a description of the items subject to duty under 19 U.S.C. 1466. Proposed section 4.14(a) also designates certain U.S. territories and possessions as not being "foreign countries" within the meaning of 19 U.S.C. 1466. These two changes incorporate into the body of the proposed section material that is currently in footnotes 26 and 27 so section 4.14 and, in accordance with previous administrative rulings, add American Samoa, the Guantanamo Bay Naval Station, Guam, and Puerto Rico to those territories and possessions now listed in footnote 26. Proposed section 4.14(a) also sets forth rules governing the dutiability of foreign equipment purchases by and foreign repairs to fishing vessels, Government-owned or chartered vessels, and special-purpose vessels. The term "special-purpose vessel" is defined in the proposed amendments to that section.

Declaration and Repair Entry

Section 4.14(b) of the proposed amendment establishes rules for making the required declaration and entry of foreign repairs and equipment purchases. This proposed section also provides for referral of a case to the Office of Investigations if the required evidence of the cost of the repairs or purchases is not timely submitted or is of doubtful authenticity. Proposed section 4.14(b) establishes a concurrent time period for submission of cost evidence and filing an application for relief from payment of duty. The provision for a concurrent time period is intended to minimize delay in processing a vessel repair entry where there is a request for remission or refund of duties.

Establishment of Vessel Repair and Liquidation Units

Section 4.14(c) of the proposed amendment establishes vessel repair liquidation units under the Regional Commissioners of Customs in Customs Regions II and VIII. The Regional Commissioner of Customs in Region II (which has its headquarters in New York, New York) is responsible for processing and liquidating all vessel repair entries filed at ports in Regions I, II, III, IV, and IX. The Regional Commissioner of Customs in Region VIII (which has its headquarters in San Francisco, Calif.) is responsible for processing and liquidating all vessel repair entries filed at ports in Regions V, VI, VII, and VIII. The areas included in the various Customs Regions are described in section 1.2(c) of the Customs Regulations (19 CFR 1.2(c)).

Proposed section 4.14(c) provides for the notice of liquidation to be returned to the ports of entry for posting after processing and liquidation by the respective vessel repair liquidation units. Proposed section 4.14(c) also (1) authorizes the Regional Commissioners in Regions II and VIII to act on any application for relief from duties when the remission or refund is less than $1,000 and a clearly applicable precedent exists, and (2) sets forth the bases for remission or refund of duty.

Procedure for Remission or Refund of Duties

Section 4.14(d) of the proposed amendment sets forth the procedural requirements for processing an application for relief or a petition for review on a denial of an application for relief. Proposed section 4.14(d) provides instructions for Customs officers to assist them in processing these requests for remission or refund of duties.

Liquidation Time Limits, Protests, and Penalties

Section 4.14(e) of the proposed amendment establishes time limits for liquidating a vessel repair entry under various circumstances such as whether a request for remission or refund is filed. Proposed section 4.14(f) provides for filing a protest against a decision to treat an item as dutiable. Proposed section 4.14(g) sets forth the penalties that may be assessed for various violations of the applicable law.

Deletion of Footnotes 26 and 27 to Section 4.14

Since the substance of the material that is contained in footnotes 26 and 27 is incorporated into the text of proposed section 4.14, footnotes 26 and 27 to present section 4.14 of the Customs Regulations (19 CFR 4.14) would be deleted.

Drafting Information

The principal author of these proposed amendments to the regulations was William G. Rosoff, Attorney, Regulations and Legal Publications Division of the Office of Regulations and Rulings, United States Customs Service. However, personnel from other offices of the United States Customs Service participated in developing the proposed amendments, both on matters of substance and style.

Proposed Amendments

It is proposed to amend §§ 4.7(d)(1) and 4.14 of the Customs Regulations (19 CFR 4.7(d)(1), 4.14) in the following manner:

1. It is proposed to delete footnote 16(b) of § 4.7 and amend paragraph (d)(1) to read as follows:

§ 4.7 Inward foreign manifest; production on demand; contents and form.

* * * * *

(d)(1) The master or owner—

(i) Of a vessel documented under the laws of the United States to engage in the foreign or coasting trade, or intended to be employed in such trade, or

(ii) Of an American fishing vessel documented under a register, a license, or an enrollment and license, whether or not in possession of a permit to touch and trade, at the port of first arrival from a foreign country shall declare on Customs Form 3415 any equipment, repair parts, or material purchased for the vessel, or any expense for repairs incurred, in a foreign country, within the purview of section 466, Tariff Act of 1930, as amended (19 U.S.C. 1466). If no equipment has been purchased or repairs made, a declaration to that effect shall be made on Customs Form 3415.

* * * * *

2. It is also proposed to delete footnotes 26 and 27 of §4.14 and amend §4.14 to read as follows:

§4.14 Equipment and repairs to American vessels.

(a) *Dutiability of foreign repairs and equipment purchases.*—(1) *Items subject to duty.* All equipment, or any part thereof, including boats, purchased for, or the repair parts or materials to be used, or the expenses for repairs, including the cost of labor, incurred outside the United States by any vessel documented under the laws of the United States to engage in the foreign or coasting trade, or intended to be employed in such trade, are dutiable at the rate of 50 percent ad valorem on the actual cost in the country where the items were purchased or the repairs were made. Duty attaches at the time the repairs or purchases are made. Liability for entry and payment of duties accrues at the time of the first arrival of the vessel in a port of the United States. For the purposes of this section, a repair or purchase made in American Samoa, the Canal Zone, the Guantanamo Bay Naval Station, Guam, Puerto Rico, and the U.S. Virgin Islands is not considered to be incurred outside the United States.

(2) *Dutiable costs on specific types of vessels.*—(i) *Fishing vessels.* Vessels of the United States that are licensed or enrolled and licensed for the fisheries and have a permit to touch and trade (see section 4.15), vessels documented for the fisheries which lack a permit to touch and trade but which are intended to engage in trade, and registered vessels that are intended to engage in the fisheries are subject to this section.

(ii) *Government-owned or chartered vessels.* Vessels owned or chartered by the United States Government, if documented for, or intended to engage in, the foreign or coasting trade, are subject to this section (see paragraph (b)(2)(i) of this section with respect to entry procedures for Government vessels).

(iii) *Special-purpose vessels.* A vessel that is documented for the foreign or coasting trade, but is designed and used primarily for purposes other than transporting passengers or merchandise, is considered to be a special-purpose vessel. An owner or master of a special-purpose vessel is required to declare and enter all items purchased or repairs made outside the United States. However, if the special-purpose vessel is operated in international or foreign waters two years or more after its last departure from the United States, the only dutiable items are fish nets and netting and any items purchased or repairs made during the first six months after the vessel's last departure from the United States.

(b) *Declaration and repair entry.*—(1) *Declaration.* Upon first arrival of the vessel in the United States, the owner or master shall declare all purchases of equipment, parts or material, and all repair expenses on Customs Form 3415. The declaration is required regardless of the dutiable status of such items or expenses. The declaration shall be ready for production on demand and for inspection by the boarding officer and shall be presented as part of the original manifest when formal entry of the vessel is made. Estimated duties shall be deposited or a bond on Customs Form 7567 or 7569 shall be filed prior to the departure of the vessel, except as provided in subparagraph (2)(i). (See paragraph (g) of this section for applicable penalties.)

(2) *Entry.* All equipment, parts, or materials purchased for, and all repairs made outside the United States to, any vessel subject to the provisions of this section shall be entered on Customs Form 7535 by the master or owner of the vessel. The entry shall be filed with the appropriate Customs officer at the port of first arrival within five working days after arrival. The Customs officer with whom the entry is filed shall forward it to the appropriate vessel repair liquidation unit. The party filing the entry shall mark it to indicate whether it is a full and complete account or an incomplete account. (See paragraph (g) of this section for applicable penalties.)

(i) *Entry procedures for vessels owned or chartered by the United States.* Whenever the appropriate Customs officer determines that a Government-owned or chartered vessel, subject to the provisions of this section, is being operated by an agency of the United States, or that a Government-owned or chartered vessel is being operated by a private party for an agency of the United States under an agreement that obligates the Government agency to pay any duty on the cost of repairs, the vessel shall be allowed to depart the port of first arrival without depositing estimated duties or furnishing a bond to cover estimated duties. In all other cases, the vessel shall be treated as though privately owned.

(ii) *Time period for submitting evidence of cost.* Whenever a repair entry is submitted as a full and complete account, the entry papers shall include evidence showing the cost of each item listed on the entry. When a repair entry is submitted as an incomplete account, the evidence must be submitted within 60 days from the date of the vessel's arrival. If, prior to the end of the 60-day period, the party that is required to furnish the evidence of cost submits a written request for an extension of time beyond the 60-day period together with a satisfactory explanation of the delay to the appropriate vessel repair liquidation unit, that unit may grant an additional 30-day extension of time to submit cost evidence. Any request for a further extension of time to furnish evidence of cost shall be submitted to the appropriate vessel repair liquidation unit, which will transmit such request to Headquarters, U.S. Customs Service, Attention: Carrier Rulings Branch, for approval. If the costs shown on the complete account differ from the costs declared on the entry, the appropriate Customs officer may permit amendment of the entry.

(A) *Investigation to obtain evidence.* If the required evidence is not timely furnished or is of doubtful authenticity, the appropriate regional commissioner shall use all available means to obtain the necessary information and may refer the matter to the Office of Investigations. If an investigation is conducted, the Office of Investigations shall obtain all available evidence on the cost of the repairs and any evidence with respect to the reason for the party's failure to submit the evidence in a timely fashion.

(B) *Concurrent time period for submission of costs and filing application for relief.* The 60-day time period to submit evidence of cost on the entry is concurrent with the 60-day time period to submit an application for relief under paragraph (d)(1)(ii) of this section and will not operate to provide an additional time to submit an application for relief. A request for additional time to submit evidence of cost may include a request for additional time to submit an application for relief.

(C) *Remission or refund of duty.*—(1) *Vessel repair liquidation units.* The Regional Commissioner of Customs, Region II, is authorized to establish a vessel repair liquidation unit in that region to process and liquidate all

vessel repair entries filed at ports in Regions I, II, III, IV, and IX. The Regional Commissioner of Customs, Region VIII, is authorized to establish a vessel repair liquidation unit in that region to process and liquidate all vessel repair entries filed at ports in Regions V, VI, VII, and VIII. After processing and liquidation of the entries, the notices of liquidation shall be returned to the port of entry for posting.

(2) *Authority.* When clearly applicable precedent for a decision exists and any remission or refund of duty as a result of a decision will be less than $1,000, the Regional Commissioners of Region II and VIII are authorized to approve or deny any applications for relief on vessel repair entries filed at the ports within their respective jurisdictions. If there is no clearly applicable precedent on which to base a decision, or if the decision may result in a remission or refund of $1,000 or more in duty, the appropriate regional commissioner shall refer the matter to Headquarters, U.S. Customs Service, Attention: Carrier Rulings Branch, for advice before acting on the application for relief.

(3) *Basis for remission or refund.* Remission or refund of duty is authorized if good and sufficient evidence is furnished which shows any of the following:

(i) *Stress of weather or other casualty.* That the vessel, while in the regular course of its voyage, was compelled, by stress of weather or other casualty, while outside the United States, to purchase such equipment or make such repairs, to secure the safety and seaworthiness of the vessel to enable it to reach its port of destination in the United States. However, only the duty on the cost of the minimal repairs needed for the safety and seaworthiness of the vessel is subject to remission or refund. For the purposes of this section, the term "casualty" does not include any purchases or repairs necessitated by ordinary wear and tear, but does include a part's failure to function if satisfactory evidence shows that the specific part was repaired or serviced immediately before starting the voyage from the United States port and that the part failed to function within six months of such repair or servicing.

(ii) *United States parts and equipment installed with American labor.* That the equipment, equipment parts, repair parts or materials used on the vessel were manufactured or produced in the United States and the labor necessary to install such equipment or to make such repairs was performed by residents of the United States or by members of the regular crew of the vessel.

(iii) *Dunnage.* That the equipment, equipment parts, materials or labor were used as dunnage for cargo, or for the packing or shoring thereof, or in the erection of temporary bulkheads or other similar devices for the control of bulk cargo, or in the preparation (without permanent repair or alteration) of tanks for the carriage of liquid cargo.

(d) *Procedure for remission or refund of duties.*—(1) *Application for relief.* (i) *Form.* The application for relief need not be in any particular form. The application for relief should allege that an item or a repair expense covered by the entry is not subject to duty under paragraph (a) of this section, or that the articles purchased or the repair expenses are within the provisions of paragraph (c) of this section, or that both conditions are present. The application for relief also shall certify that all foreign equipment, parts, or materials purchased for, and all foreign repairs made to, the vessel on prior voyages have been declared as required by this section, or the application shall be deemed incomplete. The application for relief shall be signed by the master, owner, or operator of the vessel, or their authorized agent. If the application for relief is filed by a corporation, it must be signed by a duly authorized corporate officer.

(ii) *Place and time of filing.* The application for relief shall be filed with the appropriate Customs officer at the port where the vessel repair entry was made or with the appropriate vessel repair liquidation unit (see paragraph (c)(1) of this section). If the application for relief is filed at the port where the entry was made, the Customs officer who receives the application shall promptly forward it, together with his comments, if any, to the appropriate vessel repair liquidation unit. The application for relief, with supporting evidence, shall be filed within 60 days from the date of first arrival of the vessel. However, if good cause is shown, the appropriate vessel repair liquidation unit may authorize one 30-day extension of time to file beyond the 60-day filing period.

(iii) *Supporting evidence.* Unless such evidence is already filed with the Customs Service, all applications for relief shall contain duplicate copies of the following evidence:

(A) All itemized bills, receipts, and invoices covering items specified in paragraph (a)(1) of this section, segregating the cost of those items for which relief is sought from all other items listed in the vessel repair entry.

(B) Full and complete photocopies of the relevant parts of the vessel's logs.

(C) Photocopies of any American Bureau of Shipping report or any other classification society report of the cause and type of damage and the nature of the remedial action taken, together with photocopies of any certifications of seaworthiness.

(D) A certification by the master or other responsible vessel officer with personal knowledge of the facts relating to the relief sought, including, but not limited to, details of the claimed stress of weather or other casualty, when and where they occurred, the damages due to such stress of weather or other casualty, and the place and date where the vessel was repaired or the equipment for the vessel was purchased.

(E) A certification by the master as to whether the repairs or equipment purchased were necessary for the safety and seaworthiness of the vessel to enable it to reach its port of destination in the United States.

(F) A written description of the circumstances involved by the master or other responsible vessel officer having knowledge of the facts when remission or refund is sought under the provisions of paragraph (c)(3)(ii) (relating to the use of American equipment and labor) or (c)(3)(iii) (relating to dunnage) of this section.

(iv) *Documentary evidence.* All documents submitted in support of an application must be certified by the master or owner of the vessel to be originals or copies of originals. In the case of a vessel that is owned or operated by a corporation, the master or duly authorized corporate officer shall certify the documents. Documents in a foreign language shall be accompanied by an English translation that is certified for accuracy by the translator.

(v) *Action.* Within 60 days after receipt of an application for relief by a vessel repair liquidation unit, the appropriate regional commissioner shall either approve or deny the application for relief or forward the application for relief to Headquarters, U.S. Customs Service, Attention: Carrier Rulings Branch, for advice, as provided in paragraph (c)(2) of this section. The appropriate regional commissioner shall promptly give written notice to the party who submitted the application for relief of any final decision on the application. Such notice shall advise the party of its right to petition for review of the decision under paragraph (d)(2) of this section. If the decision involves remission of duty under paragraph (c) of this section and the entry has been liquidated, reliquidation is not required. If any other relief is granted and the entry has been liquidated, reliquidation is required.

(vi) *Suspension of liquidation.* If an application for relief has been filed within the time period provided in paragraph (d)(1)(ii) of this section, liquidation of the vessel repair entry shall be suspended until 30 days after the date of the written notice provided in paragraph (d)(1)(v) of this section.

(2) *Petition for review on a denial of an application for relief.*

(i) *Form.* If an applicant is dissatisfied with the decision on its application for relief, the applicant may file a petition for review of that decision. The petition for review need not be in any particular form. The petition for review must identify the decision on the application for relief and must detail the exceptions taken to that decision. The petition shall be signed by the master, owner, or operator of the vessel, or their authorized agent. If the petition for review is filed by a corporation, it must be signed by a duly authorized corporate officer.

(ii) *Place and time of filing.* The petition for review shall be addressed to the Commissioner of Customs and shall be filed with the appropriate vessel repair liquidation unit within 30 days after the date of the written notice to the party of the decision on the application for relief, as provided in paragraph (d)(1)(v) of this section. However, if good cause is shown, the appropriate vessel repair liquidation unit may authorize one additional 30-day extension of time.

(iii) *Action.* The appropriate regional commissioner shall promptly transmit a copy of the petition for review, any comments and recommendations he may have on the petition for review, and the entire file on the application for relief to Headquarters, U.S. Customs Service, Attention: Carrier Rulings Branch, for decision. After notification of the decision by Customs Service Headquarters, the appropriate regional commissioner will give written notification of that decision to the party who filed the petition for review. Such notice will inform the party of its right to submit a supplemental petition for review and inform the party that no further suspension of liquidation will be permitted.

(iv) *Suspension of liquidation.* If an original petition for review is filed within the time provided for in paragraph (d)(2)(ii) of this section, liquidation of the vessel repair entry shall be further suspended until the regional commissioner notifies the party who filed the petition of the decision on the petition. Following notification of the Headquarters decision to the party who filed the petition, the vessel repair liquidation unit shall promptly initiate liquidation of the entry in accordance with the decision on the petition even if a supplemental petition for review is filed.

(e) *Liquidation of vessel repair entries, time limits.* If evidence of cost is available and the appropriate vessel repair liquidation unit receives written notification from the master, owner, or operator of the vessel, or their authorized agent, that an application for relief will not be filed, the vessel repair liquidation unit shall promptly initiate liquidation of the entry. In all other cases where the evidence of cost is available, the entry may be liquidated 60 days after arrival of the vessel, or at the expiration of any extension of time granted under paragraph (b)(2)(ii) of this section to furnish evidence of cost, unless an application for relief is timely filed as provided in paragraph (d)(1)(ii) of this section. If an application for relief is timely filed, the vessel repair entry may be liquidated 30 days after the date of the written notice to the party who filed the application for relief, as provided in paragraph (d)(1)(v), unless a petition for review is timely filed under paragraph (d)(2)(ii) of this section. If a petition for review is timely filed, the vessel repair entry may be liquidated after the date of the notification of the decision on the petition to the party who filed the petition even though a supplemental petition for review is filed.

(f) *Protests.* Following liquidation of an entry, a protest under Part 174 of this chapter may be filed against the decision to treat an item or a repair as dutiable under paragraph (a) of this section.

(g) *Penalties.*—(1) *Failure to report, enter, or pay dutiable items.* If the owner or master of a vessel subject to the provisions of paragraph (a) of this section shall willfully and knowingly neglect or fail to report, make entry, and pay duties as required by this section, the vessel, with its tackle, apparel, and furniture, shall be subject to seizure and forfeiture.

(2) *False Declaration.* If any person required to file Customs Form 3415 by paragraph (b)(1) of this section, or to file Customs Form 7535 by paragraph (b)(2) of this section willfully and knowingly provides any false information, or willfully and knowingly omits any required information, he shall be subject to the criminal penalties provided for in 18 U.S.C. 1001.

These amendments are proposed under the authority of R.S. 251, as amended (19 U.S.C. 66), and sections 498, 514, 624, 46 Stat. 728, as amended, 734, as amended, 759 (19 U.S.C. 1498, 1514, 1624).

R. E. CHASEN,
Commissioner of Customs.

Approved: March 20, 1978.

BETTE B. ANDERSON,
Under Secretary of the Treasury.

[FR Doc. 78-8798 Filed 4-3-78; 8:45 am]

[4110-03]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[Docket No. 78N-0023]

[21 CFR Parts 182, 184, 186]

AMMONIUM BICARBONATE, AMMONIUM CARBONATE AMMONIUM CHLORIDE, AMMONIUM HYDROXHIDE, AND MONO- AND DIBASIC AMMONIUM PHOSPHATE

Proposed Affirmation of Gras Status as Human Food Ingredients

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: This is a proposal to affirm ammonium bicarbonate, ammonium carbonate, ammonium chloride, ammonium hydroxide, and mono- and dibasic ammonium phosphate as generally recognized as safe (GRAS) human food ingredients. The safety of these ingredients has been evaluated pursuant to a comprehensive safety review being conducted by the agency. The proposal would list the ingredients as food substances affirmed as GRAS. The GRAS status of ammonium sulfate is being addressed in the proposal on sulfates.

DATE: Comments by June 5, 1978.

ADDRESS: Written comments (preferably four copies) to the Hearing Clerk (HFC—20), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

FOR FURTHER INFORMATION CONTACT:

Corbin I. Miles, Bureau of Foods (HFF—335), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C Street SW., Washington, D.C. 20204, 202-472-4750.

SUPPLEMENTARY INFORMATION: The Food and Drug Administration is conducting a comprehensive safety review of human food ingredients classified as generally recognized as safe (GRAS) or subject to a prior sanction. The Commissioner of Food and Drugs has issued several notices and proposals (see the FEDERAL REGISTER of July 26, 1973 (38 FR 20040)) initiating this review. Pursuant to this review, the safety of ammonium bicarbonate, ammonium carbonate, ammonium chloride, ammonium hydroxide, and mono- and dibasic ammonium phosphate has been evaluated. In accordance with the provisions of § 170.35 (21 CFR 170.35), the Commissioner proposes to affirm the GRAS status of these ingredients.

The ammonium ion (NH_4^+) in aqueous solution can exist in combination

with a variety of anions. The ammonium ion plays a major role in essential physiological processes of man, including involvement in acid-base balance and in intermediary metabolic cycles. Ammonia and several ammonium salts are ubiquitous in living organisms. Ammonia is an essential link in nature's nitrogen cycle. Sources of ammonia within the body include the deamination of amino acids and amides. Excess nitrogen derived from mammalian biochemical processes is chiefly converted to urea and excreted.

Ammonium bicarbonate, § 182.1135 (21 CFR 182.1135), ammonium carbonate § 182.1137 (21 CFR 182.1137), ammonium hydroxide, § 182.1139 (21 CFR 182.1139), and ammonium phosphate, mono- and dibasic, § 182.1141 (21 CFR 182.1141), are listed as multiple purpose GRAS food substances, pursuant to regulations published in the FEDERAL REGISTER of November 20, 1959 (24 FR 9368). Ammonium chloride and ammonium hydroxide are listed in § 182.90 (21 CFR 182.90) as GRAS substances migrating to food from paper and paperboard used in food-packaging materials, pursuant to regulations published in the FEDERAL REGISTER of June 17, 1961 (26 FR 5421). An advisory opinion letter was also issued for the GRAS use of ammonium chloride in several food categories.

Ammonium bicarbonate, ammonium carbonate, and ammonium hydroxide are also permitted for use in cacao products (21 CFR Part 163). In addition, ammonium hydroxide is listed in § 177.1600 (21 CFR 177.1600) as a reactant for producing carboxyl-modified polyetheylene resins.

A representative cross-section of food manufacturers was surveyed to determine the specific foods in which certain ammonium salts were used and the levels of usage. Information from surveys of consumer consumption was obtained and combined with the manufacturing information to obtain an estimate of consumer exposure to these ingredients. In 1970, the use of ammonium compounds in food was estimated to be about 13 million pounds. The various ammonium compounds and the poundage used are as follows: Ammonium bicarbonate, 7.1 million; ammonium carbonate, 54 thousand; ammonium hydroxide, 1.2 million; monobasic ammonium phosphate 108; and dibasic ammonium phosphate, 974 thousand (ammonium sulfate, covered in the proposal on sulfates, 3.3 million pounds). Poundage information on ammonium chloride was not available. The use of ammonium compounds, in food for which comparable data are available, nearly doubled during the period 1960 to 1970.

Ammonium compounds have been the subject of a search of the scientific literature from 1920 to the present. The criteria used in the search were chosen to discover any articles that considered (1) chemical toxicity, (2) occupational hazards, (3) metabolism, (4) reaction products, (5) degradation products, (6) any reported carcinogenicity, teratogenicity, or mutagenicity, (7) dose response, (8) reproductive effects, (9) histology, (10) embryology, (11) behavioral effects, (12) detection, and (13) processing. A total of 916 abstracts on ammonium salts was reviewed, and the 124 particularly pertinent reports from the literature survey have been summarized in a scientific literature review.

The scientific literature review shows, among other studies, the following information as summarized in the report of the Select Committee on GRAS Substances (hereinafter referred to as the Select Committee), selected by the Life Sciences Research Office of the Federation of American Societies for Experimental Biology:

The Select Committee has found few reports of experiments expressly conducted to determine the oral toxicity of ammonium compounds, and none concerning their long-term chronic effects. In the absence of direct data from feeding tests, extrapolation of results of studies conducted for other purposes yields some relevant information. In thse studies the concentration of the ammonium salt was usually adjusted to produce the specific biochemical behavior of interest. Most of the experiments were performed with ammonium chloride. Further, in these studies, the ammonium salts were usually administered in pure form or in drinking water, rather than mixed with foods, as would normally be the case when they are used as food ingredients.

The oral lethal dose of ammonium sulfate for the rat is reported to be between 3 and 4 g per kg. The oral lethal dose of ammonium hydroxide for cats is reported to be 250 mg (as NH_3) per kg. In other studies, 41 cats given a single dose of 1 g of ammonium chloride per kg body weight by stomach tube, showed no untoward effects. Cats fed 1 to 2 g of ammonium chloride in their food daily for 5 months, followed by the same amount daily of ammonium chloride plus 1 g cholesterol for up to 10 months, did not exhibit atherosclerotic deposits in their blood vessels.

Development of atheromatous lesions in the aorta of the rabbit was unaffected by the administration of 30 to 50 ml of 2 percent ammonium chloride (0.6 to 1.0 g) daily by stomach tube and 3 to 4 g cholesterol per week for 4 weeks. No untoward results were noted from the same dosage of ammonium chloride alone given daily to rabbits by stomach tube for 4 weeks.

Adult rats given 1.5 percent ammonium chloride for 330 days weighed significantly less than the controls. Bone formation was not affected, although bone resorption increased. In another study, rats given 2 g per kg of ammonium chloride in their diet showed a lower increase in glucuronic acid excretion in the urine than when such compounds as lactic acid and acetic acid were fed.

In dogs, 200 mg of ammonium chloride per kg per day in 3 divided oral doses produced a mild systemic acidosis. The normal pH of the urine (6.6) decreased to an average of 5.5.

Several investigators have reported kidney enlargement after feeding large doses of ammonium chloride. Lotspeich reported that consumption of ammonium chloride in drinking water by rats for 7 days (*ad libitum* consumption of a 0.28 molar solution, estimated from data presented to be of the order of 700 mg per kg per day) resulted in new cell formation and enlargement existing cells in the kidney. Later work in the same laboratory confirmed the hyperplastic response of the kidney in rats fed ammonium chloride at a level of approximately 700 mg per kg per day. Janicki gave rats ammonium chloride by gastric intubation (approximately 1 g per kg per day) and found renal enlargement but concluded it was not due to hyperplasia. Thomson and Halliburton supplemented rat diets with 3 percent ammonium chloride for 6 days (dose level not stated) and found kidney enlargement. Since ammonium citrate or sodium chloride at equivalent levels did not cause hypertrophy, it was concluded that the effectiveness of ammonium chloride in this respect was due to its acidotic effect. Seegal found rabbit kidneys on histologic examination to be moderately swollen with some degeneration of the epithelium of the convoluted tubules after daily intragastric doses of ammonium chloride (approximately 750 mg per kg) for 11 days. Similar effects were also reported in rabbits and dogs. These data indicate that ammonium chloride fed at very high levels can cause kidney damage, probably due to its acidotic effects. Because no reports have been found where kidney effects have been studied at ammonium chloride engestion levels comparable to those likely to be present in the daily diet, the practical significance of these effects, as related to their evaluation, is difficult to assess.

Fazekas found that rabbits develop enlarged parathyroids and adrenals after feeding ammonium acetate, ammonium chloride, ammonium lactate, ammonium phosphate, or ammonium sulfate (dose level approximately 0.5 g per kg per day), for several months. Consumption of ammonium chloride (about 750 to 1,000 mg per kg per day) led to osteoporosis in dogs.

Adult, colostomized hens absorbed 97.8 percent of the nitrogen of diammonium phospahate and 99.0 percent of that of diammonium citrate in their diets. The addition of 1.5 percent diammonium phosphate to the minimal amino acid diet of chicks produced a significant increase in live weight at 4 weeks. However, levels of 3.0 or 4.4 percent depressed the weight significantly. The albumen quality in the newly laid eggs was significantly improved by the addition of 2 percent ammonium chloride in the diet of the hens. However, an increase in the number of grade AA eggs was accompanied by a decrease in shell thickness. The relevance of these studies to mammals is not clear since it is recognized that the avian and mammalian mechanisms for metabolism and excretion of nitrogen differ.

Patients ingesting ammonium chloride (100 to 150 mg per kg per day) for several days showed an increased urinary excretion of calcium and magnesium; excretion of other cations and anions was also affected. Since the smallest dose of ammonium compounds used in these studies was considerably higher than that likely to be consumed in man's daily diet, the significance of these effects to current food practices is not interpretable.

Metabolic studies with patients, including pregnant women, have provided significant

data. For example, in one study, 1 g of ammonium chloride was given to middle aged and older patients at 2-hour intervals during the day for 7 doses and once during the night for a total dose of 8 g. Four patients were receiving maintenance antimalarial doses of 0.2 or 0.3 g of quinacrine hydrochloride, 5 daily doses of 0.2 or 0.4 g of chloroquine, and one dose of 400 mg of santoquine. The ammonium chloride increased the renal excretion of all three compounds. No toxic effects were recorded from these doses of ammonium chloride.

Thirteen women and two men between the ages of 22 and 60 years, given 1 g ammonium choride every other day for 20 days, followed by a pause of 10 days, developed headaches and neurasthenia. Disturbance of menses occurred in 10 of the women. An initial loss of appetite disappeared after the sixth day, followed by an increased desire to eat, which lasted long after the treatment period. A significant weight gain, consisting primarily of body fat, occurred in all subjects.

Acidosis was reported in another study involving 5 men each of whom ingested 10 to 20 g of ammonium chloride over each 24 hour period for 11 to 18 days. In a similar study, 6 to 8 g of ammonium chloride per day for 6 to 9 days produced a mild metabolic acidosis in 11 healthy subjects 21 to 28 years of age.

Five female patients with rheumatoid arthritis were given 6 to 8 g of ammonium chloride daily for varying lengths of time. There was a significant loss in body weight, which was ascribed mainly to the water loss from the body. At the same time there was a decrease in joint swelling. A progressive increase in mobility of the joints occurred in three patients. There has been no initial improvement in joint mobility in the fourth and fifth patients, who had severe joint destruction with some ankylosis. All patients experienced relief of joint pains during the treatment.

Six subjects with normal pregnancy, eight with toxemia of pregnancy, and three with essential hypertension associated with pregnancy were given an average dose of 15 g ammonium chloride dissolved in orange juice daily for 3 days. All of the patients tolerated the dosage fairly well. Three experienced nausea, but vomiting occurred in only two instances. There were no changes in blood pressure or pulse rate. The pattern of acid-base regulation following the ingestion of ammonium chloride in pregnant subjects did not differ from that of nonpregnant individuals.

In patients with substantial impairment of liver function who become comatose, an elevation of plasma ammonia level is frequently, although not invariably, observed. The degree of neurological abnormality is not always correlated with the degree of ammonia increase in the blood. This phenomenon is thought to be attributable to the failure of adequate urea formation by the liver, thus permitting the accumulation of absorbed ammonium ion in the blood.

Under similar conditions, repeated ammonia infusions produce a state of confusion and coma in monkeys resembling that seen in man. In addition, there are rare individuals who have genetically determined metabolic disorders that may limit their ability to tolerate large amounts of ammonia or ammonium salts in the diet. However, it is doubtful that these effects could be significant in the oral administration of ammonium salts except in individuals already seriously ill with liver disease.

A few experiments on animals relating to carcinogenicity have been reported. Oral administration of ammonium chloride and ammonium acetate was claimed to exert an inhibiting effect on Twort-carcinoma in mice. Twenty rats were given 1 g per kg of ammonium chloride daily in the feed for 6 months, following which they were inoculated with 26 million cancer cells per animal. They survived 2 to 3 weeks longer than the controls, with only rare cases of metastases. Similar results were found in another rat study in which 1 to 1.5 g per kg ammonium chloride was added to the feed. Precancerous changes were observed in the stomachs of rats fed daily for 1 to 2 years with about 1 g ammonium chloride per kg body weight. The survival time of mice with chloroleukemia 1394 was not significantly prolonged with a combination dosage of sodium bicarbonate and ammonium chloride. No evidence of tumor formation was found after feeding female rabbits ammonium carbonate, chloride, hydroxide, or sulfate in doses up to 700 mg per kg body weight for 5 to 16 months. To the Select Committee's knowledge, no studies of the mutagenic or teratogenic potential of ammonium salts have been reported. The Select Committee recognizes that a considerable literature exists which indicates that parenterally administered ammonium salts can elicit toxic reactions (ammonia toxicity) that fail to occur when equivalent doses are administered orally. These data are considered irrelevant to this report because the normal liver so readily detoxifies ammonium ion from alimentary sources that blood concentrations of ammonium salts do not rise to the levels necessary to evoke toxic response. For the same reason studies on the toxic effects of inhaled ammonia are not considered in this report.

All the available safety information on these ammonium salts has been carefully evaluated by qualified scientists of the Select Committee. It is the opinion of the Select Committee that:

Ammonia and ammonium ion are integral components of normal metabolic processes and play an essential role in the physiology of man. Although there have been no significant feeding studies specifically designed to ascertain the safety threshold of ammonium compounds as food ingredients, numerous metabolic studies have been reported in the scientific literature. Extrapolation of these findings to the concentrations of ammonium compounds normally present in foods does not suggest that there would be untoward effects at such levels.

It is the conclusion of the Select Committee that there is no evidence in the available information on ammonium bicarbonate, ammonium carbonate, ammonium chloride, ammonium hydroxide, and mono- and dibasic ammonium phosphate that demonstrates, or suggests reasonable grounds to suspect, a hazard to the public when they are used at levels that are now current or that even reasonably be expected in the future. Based upon his own evaluation of all available information, the Commissioner concurs with this conclusion. The Commissioner therefore concludes that no change in the current GRAS status of these ingredients is justified.

It has been determined that the standard of identity for cacao nibs (21 CFR 163.110) and, by reference, the standards for chocolate liquor (21 CFR 163.111) and breakfast cacao (21 CFR 163.113), which provide for the optional use of ammonium bicarbonate, ammonium carbonate and ammonium hydroxide, may be affected by this proposal. These basic chocolate substances are used as ingredients in several standardized chocolate products. Since the survey of food manufacturers did not indicate that these ammonium salts were used in cacao or related chocolate products, these uses are not included in this proposal. In previous GRAS affirmation proposals, it was emphasized that use information is very important in assessing the safety of food ingredients. Therefore, information on the use (level of use and intended technical effect) of ammonium bicarbonate, ammonium carbonate, and ammonium hydroxide in cacao and chocolate products is solicited as comments on this proposal. If this information is not submitted, the use of these ammonium salts in cacao and chocolate products may not be affirmed as GRAS.

The GRAS status of ammonium alginate (21 CFR 182.7133), aluminum ammonium sulfate (ammonium alum; 21 CFR 182.1127), ammonium sulfate (21 CFR 182.1143), monoammonium glutamate (21 CFR 182.1500), and alum (double sulfate of aluminum and ammonium potassium, or sodium; 21 CFR 182.90) is not considered in this proposal. The status of these compounds is addressed in other proposals on alginates, aluminum salts, glutamates, and sulfates

Copies of the scientific literature review on ammonium ion and the report of the Select Committee are available for review at the office of the Hearing Clerk, Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, Md. 20857, and may be purchased from the National Technical Information Service, 5285 Port Royal Rd., Springfield, Va. 22151, as follows:

Title	Order No.	Price Code	Price [1]
Ammonium ion (scientific literature review)	PB-221-235	A07	$7.25
Certain ammonium salts (Select Committee report)	PB-254-532/AS.	A03	4.50

[1] Price subject to change.

This proposed action does not affect the present use of these ammonium salts for pet food or animal feed. It also does not affect the regulated use of ammonium hydroxide permitted under § 177.1600 (21 CFR 177.1600).

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 701(a), 52 Stat. 1055-56, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner proposes that Parts 182, 184, and 186 be amended as follows:

PART 182—SUBSTANCES GENERALLY RECOGNIZED AS SAFE

1. Part 182 is amended:

§ 182.90 [Amended]

a. By amending § 182.90 *Substances migrating to food from paper and paperboard products* by deleting from the listing therein the entries "Ammonium chloride" and "Ammonium hydroxide."

§ 182.1135 [Deleted]

b. By deleting § 182.1135 *Ammonium bicarbonate.*

§ 182.1137 [Deleted]

c. By deleting § 182.1137 *Ammonium carbonate.*

§ 182.1139 [Deleted]

d. By deleting § 182.1139 *Ammonium hydroxide.*

§ 182.1141 [Deleted]

e. By deleting § 182.1141 *Ammonium phosphate.*

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

2. Part 184 is amended:

a. By adding new § 184.1135, to read as follows:

§ 184.1135 Ammonium bicarbonate.

(a) Ammonium bicarbonate (NH_4HCO_3, CAS Reg. No. 1066-33-7) is prepared by reacting gaseous carbon dioxide with aqueous ammonia. Crystals of ammonium bicarbonate are precipitated from solution and subsequently washed and dried.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 2d Ed. (1972)[1] as amended by the first supplement (1974)[1].

(c) The ingredient is used as a dough strengthener as defined in § 170.3(o)(6) of this chapter, leavening agent as defined in § 170.3(o)(17) of this chapter, pH control agent as defined in § 170.3(o)(23) of this chapter, and texturizer as defined in § 170.3(o)(32) of this chapter.

(d) The ingredient is used in food in accordance with § 184.1(b)(1) of this chapter, at levels not to exceed good manufacturing practice. Current good manufacturing practice results in a maximum level, as served, of 3.2 percent for baked goods as defined in § 170.3(n)(1) of this chapter, 0.06 percent for other grain as defined in § 170.3(n)(23) of this chapter, 0.1 percent for snack foods as defined in § 170.3(n)(37) of this chapter and for soft candy as defined in § 170.3(n)(38) of this chapter, 0.04 percent for reconstituted vegetables as defined in § 170.3(n)(33) of this chapter, and 0.4 percent for infant baked goods.

b. By adding new § 184.1137, to read as follows:

§ 184.1137 Ammonium carbonate.

(a) Ammonium carbonate ($(NH_4)_2CO_3$, CAS Reg. No. 8000-73-5) is a mixture of ammonium bicarbonate (NH_4HCO_3) and ammonium carbamate (NH_2COONH_4). It is prepared by the sublimation of a mixture of ammonium sulfate and calcium carbonate and occurs as a white powder or hard, white or translucent mass.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 2d Ed. (1972)[1].

(c) The ingredient is used as a leavening agent as defined in § 170.3(o)(17) of this chapter and pH control agent as defined in § 170.3(o)(23) of this chapter.

(d) The ingredient is used in food in accordance with § 184.1(b)(1) of this chapter, at levels not to exceed good manufacturing practice. Current good manufacturing practice results in a maximum level, as served, of 2.0 percent for baked goods as defined in § 170.3(n)(1) of this chapter and for gelatins and puddings as defined in § 170.3(n)(22) of this chapter.

c. By adding new § 184.1138, to read as follows:

§ 184.1138 Ammonium chloride.

(a) Ammonium chloride (NH_4Cl, CAS Reg. No. 12125-02-9) is produced by the reaction of sodium chloride and an ammonium salt in solution. The less soluble sodium salt separates out at elevated temperatures, and ammonium chloride is recovered from the filtrate on cooling.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 2d Ed. (1972)[1] as amended by the first supplement (1974)[1].

(c) The ingredient is used as a dough strengthener as defined in § 170.3(o)(6) of this chapter and flavor enhancer as defined in § 170.3(o)(11) of this chapter.

(d) The ingredient is used in food in accordance with § 184.1(b)(1) of this chapter, at levels not to exceed good manufacturing practice. Current good manufacturing practice results in a maximum level, as served, of 0.001 percent for baked goods as defined in § 170.3(n)(1) of this chapter, and 0.8 percent for condiments and relishes as defined in § 170.3(n)(8) of this chapter.

d. By adding new § 184.1139, to read as follows:

§ 184.1139 Ammonium hydroxide.

(a) Ammonium hydroxide (NH_4OH, CAS Reg. No. 1336-21-6) is produced by passing ammonia gas into water.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 2d Ed. (1972)[1].

(c) The ingredient is used as a leavening agent as defined in § 170.3(o)(17) of this chapter, pH control agent as defined in § 170.3(o)(23) of this chapter, and surface-finishing agent as defined in § 170.3(o)(30) of this chapter.

(d) The ingredient is used in food in accordance with § 184.1(b)(1) of this chapter, at levels not to exceed good manufacturing practice. Current good manufacturing practice results in a maximum level, as served, of 0.8 percent for baked goods as defined in § 170.3(n)(1) of this chapter, 0.0005 percent for cheeses as defined in § 170.3(n)(5) of this chapter, 0.6 percent for gelatins and puddings as defined in § 170.3(n)(22) of this chapter, and 0.004 percent for processed fruits as defined in § 170.3(n)(35) of this chapter.

e. By adding new § 184.1141a, to read as follows:

§ 184.1141a Ammonium phosphate, monobasic.

(a) Ammonium phosphate, monobasic ($NH_4H_2PO_4$, CAS Reg. No. 7722-76-1) is manufactured by reacting ammonia with phosphoric acid at a pH below 5.8.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 2d Ed. (1972)[1].

(c) The ingredient is used as a dough strengthener as defined in § 170.3(o)(6) of this chapter.

(d) The ingredient is used in food in accordance with § 184.1(b)(1) of this chapter, at levels not to exceed good manufacturing practice. Current good manufacturing practice results in a maximum level, as served, of 0.01 percent for baked goods as defined in § 170.3(n)(1) of this chapter.

f. By adding new § 184.1141b, to read as follows:

§ 184.1141b Ammonium phosphate, dibasic.

(a) Ammonium phosphate, disbasic ($(NH_4)_2HPO_4$, CAS Reg. No. 7783-28-0)

[1]Copies may be obtained from: National Academy of Science, 2101 Constitution Avenue NW., Washington, D.C. 20037.

is manufactured by reacting ammonia with phosphoric acid at a pH above 5.8.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 2d Ed. (1972)[1].

(c) The ingredient is used as a dough strengthener as defined in § 170.3(o)(6) of this chapter, firming agent as defined in § 170.3(o)(10) of this chapter, leavening agent as defined in § 170.3(o)(17) of this chapter, pH control agent as defined in § 170.3(o)(23) of this chapter, and processing aid as defined in § 170.3(o)(24) of this chapter.

(d) The ingredient is used in food in accordance with § 184.1(b)(1) of this chapter, at levels not to exceed good manufacturing practice. Current good manufacturing practice results in a maximum level, as served, of 1.1 percent for baked goods as defined in § 170.3(n)(1) of this chapter, 0.01 percent for alcoholic beverages as defined in § 170.3(n)(2) of this chapter, 0.003 percent for nonalcoholic beverages as defined in § 170.3(n)(3) of this chapter, 0.012 percent for condiments and relishes as defined in § 170.3(n)(8) of this chapter, and 0.05 percent for gelatins and puddings as defined in § 170.3(n)(22) of this chapter.

PART 186—INDIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

3. Part 186 is amended:

a. By adding new § 186.1138, to read as follows:

§ 186.1138 Ammonium chloride.

(a) Ammonium chloride (NH_4Cl, CAS Reg. No. 12125-02-9) is produced by the reaction of sodium chloride and an ammonium salt in solution. The less soluble sodium salt separates out at elevated temperatures, and ammonium chloride is recovered from the filtrate on cooling.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 2d Ed. (1972)[1] as amended by the first supplement (1974)[1]

(c) The ingredient is used or intended for use as a constituent of paper and paperboard food-packaging materials.

(d) The ingredient is used at levels not to exceed good manufacturing practice.

b. By adding new § 186.1139, to read as follows:

§ 186.1139 Ammonium hydroxide.

(a) Ammonium hydroxide (NH_4OH, CAS Reg. No. 1336-21-6) is produced by passing ammonia gas into water.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 2d Ed. (1972)[1].

(c) The ingredient is used or intended for use as a constituent of paper and paperboard food-packaging materials.

(d) The ingredient is used at levels not to exceed good manufacturing practice.

The Commissioner hereby gives notice that he is unaware of any prior sanction for the use of these ingredients in food under conditions different from those proposed herein. Any person who intends to assert or rely on such a sanction shall submit proof of its existence in response to this proposal. The regulation proposed above will constitute a determination that excluded uses would result in adulteration of the food in violation of section 402 of the act (21 U.S.C. 342), and the failure of any person to come forward with proof of such an applicable prior sanction in response to this proposal constitutes a waiver of the right to assert or rely on such sanction at any later time. This notice also constitutes a proposal to establish a regulation under Part 181 (21 CFR Part 181), incorporating the same provisions, in the event that such a regulation is determined to be appropriate as a result of submission of proof of such an applicable prior sanction in response to this proposal.

Interested persons may, on or before June 5, 1978, file with the Hearing Clerk (HFC-20), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857, written comments (preferably four copies) regarding this proposal. Received comments may be seen in the above-named office between 9 a.m. and 4 p.m., Monday through Friday.

The Food and Drug Administration has determined that this proposal will not have a major economic impact as defined by Executive Order 11821 (amended by Executive Order 11949) and OMB Circular A-107.

Dated: March 27, 1978.

NOTE.—Incorporations by reference approved by the Director of the Office of the Federal Register on July 10, 1973 and July 27, 1977 and are on file in the Federal Register Library.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc. 78-8590 Filed 4-3-78; 8:45 am]

[1] Copies may be obtained from: National Academy of Science, 2101 Constitution Avenue NW., Washington, D.C. 20037.

[4510-27]

DEPARTMENT OF LABOR

Wage and Hour Division

[29 CFR Part 575]

WAIVER OF CHILD LABOR PROVISIONS FOR AGRICULTURAL EMPLOYMENT OF 10 AND 11 YEAR OLD MINORS IN HAND-HARVESTING OF SHORT SEASON CROPS

Provisions Governing Application for and Issuance of a Waiver

AGENCY: Wage and Hour Division, Labor.

ACTION: Proposed rule.

SUMMARY: The Administrator of the Wage and Hour Division is proposing regulations to implement the amendment to the Fair Labor Standards Act of 1938 by the Fair Labor Standards Amendments of 1977 inserting a new provision, section 13(c)(4). This section provides a waiver from the child labor provisions of the Act for the agricultural employment of 10 and 11 year old minors in the hand-harvesting of short season crops under certain conditions and pursuant to these proposed regulations.

DATES: Comments due on or before May 4, 1978.

ADDRESS: Comments shall be sent to Xavier M. Vela, Administrator, Wage and Hour Division, Attention: Lucille C. Pinkett, Room S-3022, New Department of Labor Building, 200 Constitution Avenue NW., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT:

Lucille C. Pinkett, Wage and Hour Division, Room S-3022, New Department of Labor Building, 200 Constitution Avenue NW., Washington, D.C. 20210, telephone 202-523-8412.

SUPPLEMENTARY INFORMATION: It is proposed to insert a new part 575 in title 29 of the Code of Federal Regulations to establish the procedures and requirements for application for and issuance of the waiver provided by section 13(c)(4) of the Act.

The child labor provisions of the Fair Labor Standards Act, section 12, prescribe the following minimum age standards for employment in agriculture: 16 years of age at any time in any agricultural occupation declared hazardous by the Secretary of Labor, or during school hours; 14 years of age for employment outside school hours in any agricultural occupation not declared hazardous by the Secretary of Labor, except 12 and 13 year old minors may be employed either with written parental consent or on a farm where the minor's parent or person standing in place of the parent is also employed, and minors under 12 years

of age may be employed with witten parental consent on farms where the employees are exempt from the Federal minimum wage provisions (a farm having less than 500 man-days of agricultural labor during any calendar quarter during the preceding calendar year).

NOTE.—Minors of any age may be employed by their parent or person standing in place of their parent at any time in any occupation on a farm owned or operated by their parent or person standing in place of their parent.

Section 13(c)(4) provides for a waiver from the standards described above to permit the employment of 10 and 11 year old minors in agriculture as hand-harvesters of short season crops under certain conditions and pursuant to these proposed regulations of the Secretary of Labor. (The Secretary of Labor has delegated this authority under the Act to the Administrator of the Wage and Hour Division, Secretary's Order No. 16-75, 40 FR 55913 and Employment Standards Order No. 2-75, 40 FR 56743.) These proposed regulations specify the information that an employer or group of employers must submit when applying for a waiver under section 13(c)(4). The proposed regulations also include the standards the Secretary of Labor will require for the employment of these minors under an issued waiver.

This document was prepared under the direction and control of Herbert J. Cohen, Assistant Administrator, Wage and Hour Division, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210.

Accordingly, it is proposed to amend title 29 of the Code of Federal Regulations by inserting a new part 575, as follows:

PART 575—WAIVER OF CHILD LABOR PROVISIONS FOR AGRICULTURAL EMPLOYMENT OF 10 AND 11 YEAR OLD MINORS IN HAND-HARVESTING OF SHORT SEASON CROPS

Sec.

AUTHORITY: Secs. 12, 13, 18, 52 Stat. 1067, 1069, as amended; 29 U.S.C. 212, 213, 218; Secretary of Labor's Order No. 16-75, 40 FR 55913; Employment Standards Order No. 2-75, 40 FR 56743.

§ 575.1 Purpose and scope.

(a) Section 13(c)(4) was added to the Fair Labor Standards Act of 1938, as amended, by the Fair Labor Standards Amendments of 1977. This section provides that:

(A) An employer or group of employers may apply to the Secretary for a waiver of the application of section 12 to the employment for not more than 8 weeks in any calendar year of individuals who are less than 12 years of age, but not less than 10 years of age, as hand harvest laborers in an agricultural operation which has been, and is customarily and generally recognized as being, paid on a piece rate basis in the region in which such individuals would be employed. The Secretary may not grant such a waiver unless he finds, based on objective data submitted by the applicant, that—

(i) The crop to be harvested is one with a particularly short harvesting season and the application of section 12 would cause severe economic disruption in the industry of the employer or group of employers applying for the waiver;

(ii) The employment of the individuals to whom the waiver would apply would not be deleterious to their health or well-being;

(iii) The level and type of pesticides and other chemicals used would not have an adverse effect on the health or well-being of the individuals to whom the waiver would apply;

(iv) Individuals age 12 and above are not available for such employment; and

(v) The industry of such employer or group of employers has traditionally and substantially employed individuals under 12 years of age without displacing substantial job opportunities for individuals over 16 years of age.

(B) Any waiver granted by the Secretary under subparagraph (A) shall require that—

(i) The individuals employed under such waiver be employed outside of school hours for the school district where they are living while so employed;

(ii) Such individuals while so employed commute daily from their permanent residence to the farm on which they are so employed; and

(iii) Such individuals be employed under such waiver (I) for not more than 8 weeks between June 1 and October 15 of any calendar year, and (II) in accordance with such other terms and conditions as the Secretary shall prescribe for such individuals' protection.

(b) The child labor provisions of the Fair Labor Standards Act, section 12, require the following age standards for employment in agriculture:

(1) 16 years of age in any occupation at any time;

(2) 14 and 15 years of age outside of school hours except in occupations found and declared by the Secretary to be particularly hazardous for the employment of minors under 16 years of age (subpart E-1, 29 CFR 570.70, et seq.);

(3) 12 and 13 years of age in nonhazardous occupations outside of school hours if:

(i) Such employment is with the written consent of a parent or person standing in the place of a parent of such minor, or

(ii) Such employment is on the same farm where such parent or person is also employed;

(4) Under 12 years of age in nonhazardous occupations outside of school hours if such employment is with the written consent of a parent or person standing in place of a parent of such minor, on a farm where, because of the provisions of section 13(a)(6)(A) of the Act, none of the employees are required to be paid at the wage rate prescribed by section 6(a)(5) of the Act;

(5) 10 and 11 years of age in nonhazardous occupations outside of school hours employed to hand-harvest short season crop or crops under a waiver issued pursuant to section 13(c)(4) of the Act and this part;

(6) Minors of any age may be employed by their parent or person standing in place of their parent at any time in any occupation on a farm owned or operated by their parent or person standing in place of their parent.

(c) This part provides the procedures for implementation of section 13(c)(4) of the Act. This part describes the information and defines the supporting data that the employer or group of employers must submit when applying for a waiver of the child labor provisions for the employment of 10 and 11 year old minors as hand-harvest laborers in an agricultural operation. It further explains the specific requirements imposed by the statute for employment under a waiver and specifies the conditions prescribed by the Secretary for employment under a waiver.

§ 575.2 Definitions.

As used in this part—

"Act" means the Fair Labor Standards Act of 1938, as amended (52 Stat. 1060, as amended; 29 U.S.C. 201, et seq.).

"Administrator" means the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, and includes an authorized representative designated by the Administrator to perform any of the functions of the Administrator under this part.

"Agriculture" means agriculture as defined in section 3(f) of the Act and as interpreted in part 780 of this chapter.

"Department" means the U.S. Department of Labor.

"Employer" means employer as defined in section 3(d) of the Act.

"Group of employers" means a number of employers who seek to be considered together for the purpose of applying for a waiver under section 13(c)(4) of the Act.

"Hand-harvest laborers" means agricultural workers engaged solely in harvesting by hand soil grown crops such as but not limited to berries, potatoes, and beans, and as interpreted in § 780.312 of this chapter.

"Permanent residence" means the place where the minor normally re-

sides with the minor's parent or person standing in place of a parent.

"School hours" means those hours determined on the basis of the official school calendar for the school district or school districts where the minors are living while so employed.

"Secretary" means the Secretary of Labor, United States Department of Labor, or an authorized representative of the Secretary.

"Waiver" means a letter signed by the Administrator advising the named employer or group of employers that, having applied for such waiver pursuant to Section 13(c)(4) of the Act and this part, 10 and 11 year old minors may be employed in the hand-harvesting of the specified short season crop or crops for the period designated, in accordance with the terms and conditions set forth in such section of the Act and this part.

§ 575.3 Application for waiver.

(a) An application for a waiver shall be filed with the Administrator of the Wage and Hour Division, Employment Standards Administration, United States Department of Labor, Washington, D.C. 20210. To permit adequate time for processing, such application should be filed 6 weeks prior to the period the waiver is to be in effect.

(b) No particular form is prescribed. The application, which may be in letter form, shall be typewritten or clearly written and shall include the general information as described in § 575.4 and the supporting data as defined in § 575.5 shall accompany the letter of application.

(c) The application shall be signed and dated by the employer or group of employers requesting the waiver or by the authorized representative of such employer or group.

§ 575.4 Information to be included in application.

An application for a waiver pursuant to Section 13(c)(4) of the Act shall contain the following information:

(a) The name, address, and zip code of the employer, or each employer of a group of employers, and the authorized representative, if any, of an employer or group.

(b) The telephone number and area code for any employer or authorized representative from whom additional information concerning the application may be obtained.

(c) The address, location, and/or area (State, county, and/or other geographic designation), clearly identifying each employer's farm(s) or field(s) where hand-harvest laborers are to be employed.

(d) The specific crop or crops to be hand-harvested at each designated farm or field.

(e) Substantiation of the claim that such agricultural operation "is customarily and generally recognized as being paid on a piece rate basis in the region in which such individuals would be employed." The Administrator will accept signed statements to that effect from agricultural employers and employees and others, such as agricultural extension agents, in the region of employment who are familiar with farming operations and practices in the region and with the method of compensation used in such operations and practices.

(f) Designated dates of not more than 8 weeks in any calendar year, between June 1 and October 15, during which minors will be employed in the hand-harvesting of the specified short season crop or crops.

(g) The official school calendar for the school district or school districts of the minors place of permanent residence.

§ 575.5 Supporting data to accompany application.

Objection data, as required by Section 13(c)(4) of the Act, shall also be submitted by the employer or group of employers applying for a waiver, to show that:

(a) The crop to be harvested is one with a "particularly short harvesting season" within the region in which the waiver will be applicable. The administrator will accept the written statement of the agricultural extension agent for the county indicating that each field planting of a certain variety of each crop or crops is harvested within 4 weeks in the particular region. In all other instances addtional data shall be submitted relating to the nature of the harvesting season involved.

(b) The 12-year minimum age prescribed by the Act for such employment would cause "severe economic disruption in the industry of the employer or group of employers applying for the waiver." The Adminstrator will accept the written statements of knowledgeable individuals that document such disruption and industry statistics for seasons prior to 1974 as compared with industry statistics for seasons subsequent to 1974.

(c) The employment of minors pursuant to the waiver "would not be deleterious to their health or well-being." The Administrator will accept signed statements to that effect from knowledgeable individuals in the region, such as educators, doctors, or nurses affliliated with schools or public health facilities.

(d) The "level and type of pesticides and other chemicals used would not have an adverse effect on the health and well-being of minors employed under the waiver. The data shall include the following information for each farm or field (i.e., each separate geographic unit) in which minors will be employed under the waiver:

(1) The identification of and the date or the projected date of the last application prior to harvest of each chemical and/or pesticide to be used.

(2) The standards of EPA, OSHA, NIOSH, or other comparable authority which establish that each field so treated with the identified chemical and/or pesticide will not adversely affect the health or well-being of minors who will enter such field on the first day of the period designated in the waiver. (See 40 CFR Part 170 and 29 CFR Part 1928.)

(e) Individuals age 12 and above are not available for such employment. The Administrator will accept the signed statement from an appropriate official of the state employment service or other agency, or an appropriate school official for the school district or districts of the minors' place of permanent residence. The statement should verify that individuals 12 years of age and above have not placed their names on recruitment lists for employment in hand-harvesting the crop or crops specified in the application.

(f) The "industry of such employer or group of employers has traditionally and substantially employed individuals under twelve years of age without displacing substantial job opportunities for individuals over sixteen years of age." Documentation that the industry has traditionally and substantially employed individuals under 12 years of age may include newspaper reports, magazine articles, research organization reports, or other appropriate sources. Data to indicate that such employment did not displace substantial job opportunities for individuals over 16 years of age may include the signed statement of an appropriate official of the employment service agency of the State (or States, if region designated crosses State lines) certifying to that fact. This certification must be based on statistical documentation for at least the previous year.

§ 575.6 Procedure for action on an application.

(a) Upon receipt of an application for a waiver, the Administrator shall review all the information and supporting data submitted pursuant to this part. If sufficient, the Administrator shall issue a waiver; if insufficient, the Administrator may seek further information. If such information is not made available to the Administrator, the Administrator may deny the waiver.

(b) The waiver, in the form of a letter signed by the Administrator, shall set forth the terms and conditions for employment under the waiver as provided in §§ 575.7 and 575.8. The waiver shall be issued to the employer or group of employers applying for it.

(c) If a waiver is denied, the Administrator shall give written notice of such denial to the employer or group of employers applying for a waiver. Such denial will be without prejudice to the filing of any subsequent application.

§ 575.7 Statutory conditions for employment under the waiver.

Any waiver granted pursuant to Section 13(c)(4) of the Act and this part shall require that:

(a) Employment of 10 and 11 year old minors pursuant to the waiver be outside school hours.

(b) Individuals employed commute daily from their permanent residence to the farm(s) or field(s) where employed.

(c) Such individuals be employed for not more than 8 weeks between June 1 and October 15 of any calendar year. When schools are in session, any employment under a waiver shall be confined to outside of school hours.

§ 575.8 Secretary's conditions for employment under the waiver.

The Secretary prescribes the following terms and conditions for the protection of minors employed pursuant to a waiver granted under Section 13(c)(4) of the Act:

(a) Any employment pursuant to a waiver shall be in compliance with applicable Federal and State laws, and any regulations issued under them.

(b) No employer or group of employers shall employ any 10 or 11 year old minor pursuant to a waiver for more than 8 hours in any one day or for more than 40 hours in any workweek.

(c) An employer or group of employers granted such a waiver who owns, operates, or causes to be operated any vehicle for the transportation of such minors shall be responsible for assuring that:

(1) Every such vehicle is in compliance with all applicable Federal and State safety and health standards and with the rules and regulations issued by the Bureau of Motor Carrier Safety, Federal Highway Administration of the U.S. Department of Transportation;

(2) Every such vehicle be designed for transporting passengers and be operated by a lawfully licensed driver; and

(3) A vehicle liability insurance policy provides insurance in an amount not less than the amounts applicable to vehicles used in the transportation of passengers under the Interstate Commerce Act and its regulations. These amounts currently are as follows:

Insurance required for passenger equipment

	12 or less passengers	More than 12 passengers
Limit for bodily injuries to or death of 1 person	$100,000	$100,000
Limit for bodily injuries to or death of all persons injured or killed in any 1 accident (subject to a maximum of $100,000 for bodily injuries to or death of 1 person)	300,000	500,000
Limit for loss or damage in any 1 accident to property of others (excluding cargo)	50,000	50,000

(d) A copy of the waiver shall be posted or readily available at the site or sites of such employment of such minors during the entire period.

(e) The employer or group of employers shall maintain and preserve a record of the name, address, and occupation of each minor employed under the waiver in accordance with § 516.33(b) of this chapter. In addition, the record shall also include the date of birth, the name and address of the school in which the minor is enrolled, and the number of hours worked each day and each week of the designated period. Each employer required to maintain records under this part shall preserve them for a period of at least 2 years.

(f) A waiver shall be effective for the period designated therein with no provision for amendment.

§ 575.9 Failure to comply with the terms and conditions of the waiver.

If the employer or group of employers granted a waiver pursuant to Section 13(c)(4) of the Act and this part do not comply with the terms and conditions set forth in the waiver and this part, the waiver shall be null and void and the employer or group of employers will be subject to civil money penalties under Section 16(e) of the Act.

Signed at Washington, D.C., on this 30th day of March 1978.

XAVIER M. VELA,
Administrator,
Wage and Hour Division.

[FR Doc. 78-8992 Filed 4-3-78; 8:45 am]

[4510-26]

Occupational Safety and Health Administration

[29 CFR Part 1910]

[Docket No. H-059A]

OCCUPATIONAL EXPOSURE TO BENZENE

Liquid Mixtures; Notice of Proposed Rulemaking and Notice of Stay; Correction

AGENCY: Occupational Safety and Health Administration; Department of Labor.

ACTION: Correction to notice of proposed rulemaking and notice of stay.

SUMMARY: This notice corrects an error in the effective date of the administrative stay of the benzene standard as it applies to work operations involving liquid mixtures containing 0.1 percent or less benzene, or the vapors from these liquids. Because of a typographical error, this date appeared incorrectly in FR Doc. 78-8189 (43 FR 12890).

DATES: The effective date of the stay was March 13, 1978.

FOR FURTHER INFORMATION CONTACT:

James Vail, Directorate of Health Standards Programs, Occupational Safety and Health Administration, 3rd Street and Constitution Avenue NW., Room N3658, Washington, D.C., 20210, telephone 202-523-7194.

The Occupational Safety and Health Administration (OSHA), in the FEDERAL REGISTER issue of March 28, 1978 (43 FR 12890), published a notice proposing to amend the permanent standard regulating worker exposure to benzene, 29 CFR 1910.1028, to exclude from coverage of the standard liquid mixtures containing 0.1 percent or less benzene by volume, or the vapors from such liquids. In that notice, OSHA also announced a stay of the application of the benzene standard to operations in which the sole exposure to benzene is from liquid mixtures containing 0.1 percent or less benzene, or from the vapors of these liquids.

The FEDERAL REGISTER document erroneously stated that it was effective April 27, 1978. The inclusion of this incorrect date has resulted in confusion as to the effective date of the administrative stay. Accordingly, OSHA corrects the notice to clarify that the administrative stay as to liquid mixtures containing 0.1 percent or less benzene by volume, or the vapors from such liquids became effective on March 13, 1978 (the effective date of the standard).

Accordingly, FR Doc. 78-8189 is corrected as follows:

1. On page 12891, second column the first two lines of the paragraph headed "Notice of Stay", are corrected to read as follows:

"Pending OSHA's determination of this issue, OSHA, on March 13, 1978, stayed the application of the provisions of the benzene".

2. On page 12891, third column, the effective date provision, appearing under proposed § 1910.1028(a)(2)(iii), is deleted.

This document was prepared under the direction of Eula Bingham, Assistant Secreatry of Labor for Occupational Safety and Health, U.S. Department of Labor, 3rd Street and Constitution Avenue NW., Washington, D.C. 20210.

[6560-01]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 876-3]

[40 CFR Part 56]

REGIONAL CONSISTENCY

Clean Air; Public Meeting

AGENCY: Environmental Protection Agency.

ACTION: Advance notice of proposed rulemaking; notice of upcoming public meetings on regional consistency regulations.

SUMMARY: In the advance notice of proposed rulemaking for the development of regional consistency regulations under the Clean Air Act Amendments, 43 FR 4872 (February 6, 1978), EPA announced a series of public workshop meetings at which the general public, industry, and public interest groups could submit views and opinions and participate in the development of the regulations themselves. The dates previously announced for these meetings have been changed as specified below.

DATES: workshop meetings: April 13 and 14, 1978, in Dallas, Tex., May 18 and 19, 1978, Boston, Mass.

ADDRESSES: Workshop meetings: In Dallas, Tex.—EPA Regional Headquarters, First International Building, 1201 Elm Street, Dallas, Tex. 75270, on April 13, 1978, beginning at 1 p.m., and April 14, 1978, beginning at 9 a.m.; in Boston, Mass.—EPA Regional Headquarters, John F. Kennedy Building, Boston, Mass. 02203, on May 18, 1978, beginning at 9 a.m., and on May 19, 1978, beginning at 9 a.m.

FOR FURTHER INFORMATION CONTACT:

Mr. Paul DeFalco, Jr., Regional Administrator, EPA, 215 Fremont Street, San Francisco, Calif. 94105, telephone 415-556-2320.

SUPPLEMENTARY INFORMATION: The EPA is continuing to develop regulations to provide for consistent implementation of the Clean Air Act, as required by section 301(a)(2) of the 1977 Amendments to the Act. Two public workshops have been held to solicit the views of interested parties. We invite you to participate in two additional public workshops to review what work has been done and to provide any comments on the ongoing effort. These workshops will be held as follows:

Dallas, Tex.—EPA Regional Headquarters, First International Building, 1201 Elm Street, Dallas, Tex. 75270, on April 13, 1978, beginning at 1 p.m., and April 14, 1978, beginning at 9 a.m.

Boston, Mass.—EPA Regional Headquarters, John F. Kennedy Building, Boston, Mass. 02203, on May 18, 1978, beginning at 9 a.m., and on may 19, 1978, beginning at 9 a.m.

As previously announced in the advance notice of proposed rulemaking for these regulation, 43 FR 4872 (February 6, 1978), EPA will hold a public hearing after the regulations are proposed and before they are published in final form. The date, time, and place of the hearing will be announced upon proposal of the regulation. Interested persons may also participate in the development of these regulations by submitting written comments to Mr. Paul De Falco, Jr., Regional Administrator, EPA, 215 Fremont Street, San Francisco, Calif. 94105, telephone 415-556-2320.

Dated: March 29, 1978.

HENRY E. BEAL,
Director, Standards and Regulations Evaluation Division.

[FR Doc. 78-8899 Filed 4-3-78; 8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Institute of Museum Services

[45 CFR Part 64]

MUSEUM SERVICES PROGRAM

Correction

In FR Doc. 78-7554 appearing on page 13012 in the issue of Tuesday, March 28, 1978, on page 13015, the 3rd column, § 64.16(b)(2), the 8th line, "$12,000" should read, "$12,500".

On page 13016, the 3rd column, the 4th paragraph, the 12th line, "$425, 00" should read, "$25,000".

On page 13017, the 1st column, the 2nd line should read, "of funds for particular categories is at-[tempted]".

[6050-01]

ACTION

[45 CFR Part 1201]

STANDARDS OF CONDUCT

Proposed Amendments to Agency Rules on Conflict of Interests

AGENCY: ACTION.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: ACTION is proposing amendments to its Standards of Conduct through the adoption of seven new rules on Conflict of Interests. Existing agency rules, which are contained in the Standards of Conduct, overlap and are often inconsistent with one another. The seven new rules are designed to provide coherence, uniformity and predictability in all areas involving conflict of interests as they relate to this Agency. They also represent a substantial tightening up of the present rules so as to prevent both the appearance of and potential for conflicts in the future.

DATE: Written comments must be received on or before May 4, 1978.

ADDRESS: Comments should be directed to: Office of General Counsel, ACTION, Room 607, Connecticut Avenue NW., Washington, D.C. 20525.

FOR FURTHER INFORMATION CONTACT:

Harry MacLean, General Counsel, ACTION, 806 Connecticut Avenue NW., Washington, D.C. 20525, 202-254-3116.

SUPPLEMENTARY INFORMATION:

INTRODUCTION

The ACTION Task Force on Conflict of Interests was formed in December of 1977 by the General Counsel at the request of the ACTION Director as a result of an investigation and report on the multiple relationships between the Agency, a special employee, and a private, nonprofit organization. Although the investigative report did not find any specific violations of the Agency's rules on conflict of interests, it did reveal a situation where "an appearance of or a potential for a conflict of interest" existed: an individual was employed as a consultant to the Agency while at the same time representing an organization before the Agency on one contract and one grant matter.

In a memorandum to the General Counsel, the Director instructed that the task force:

(1) Conduct a comprehensive review of Agency policy and regulations regarding the conflict of interests;

(2) Make specific recommendations aimed at preventing appearances of a conflict of interest;

(3) Recommend specific rules to insure that Agency officials and employees under their supervision are excluded from the decision processes involving grants to or contracts with organizations with which they have been previously associated;

(4) Recommend internal Agency processes to insure that the new policies are carried out.

On February 28, 1978, the Task Force completed its report and submitted it to the Director. The report recommends adoption of seven new conflict of interest rules which, in the opinion of the Task Force, represent significant steps in the direction of preventing the appearance of and the potential for conflict of interests. The existing rules consist of a hodgepodge of executive order provisions, statu-

tory prohibitions, regulations of the Civil Service Commission, and various standard or boilerplate provisions developed by other agencies. They overlap and are inconsistent with one another. But most importantly, no apparent attempt has been made to tailor them to the particular facts, functions and processes of this Agency. The seven new rules are designed to provide coherence, uniformity and predictability in all areas involving conflict of interests as they relate to this Agency.

CONFLICT OF INTERESTS

A brief discussion of the term "conflict of interests" may help to place the proposed rules in perspective. An *actual* conflict of interest exists when a person is in a position of serving dual and incompatible interests. The most obvious example is a situation where an employee is participating in a decision to award a grant to an organization in which he or she has a financial interest. His or her obligation to one interest, the Agency, is incompatible with his or her other interest, the organization. There is both a managerial and ethical objection to this situation. The Agency cannot rely on the objectivity of the employee. His or her advice is contaminated by the competing interest and thus his or her usefulness as an employee is diminished. The ethical command against serving two masters rises to the level of a Jungian archetype in our society—it is simply dishonest for an individual to occupy a position of advising a person or an organization on a matter in which the individual has a personal interest. In government, it is even more objectionable because the employee is in a quasi-fiduciary relationship to his or her employer, the public.

The "appearance of and potential for" conflict of interests issues are more difficult. Here we are dealing with the situation where at a particular point in time there may not be an actual conflict between two interests, but either there could appear to be a conflict of interest or, because of the particular circumstances, the potential for an actual or apparent conflict is substantial. The obvious appearance situation is the one in which an employee participates in a decision to make a grant to an organization by which he or she was employed prior to joining the agency. No actual conflict can be demonstrated in terms of the existence of a currently competing interest, but it is the suspicion of an underlying bias, of a residual favoritism, that is the problem. The potential conflict situation is one in which the person is simply wearing too many hats at the same time, and while there may not be an actual conflict, the risk is great that at some point in the future the roles may crossover and blur, or appear to crossover and blur. This is the case of a consultant to this agency that is an employee of an organization that is both a grantee and contractor with the agency. Assuming that there is no actual crossover, that is, that he or she does not participate in both sides of a decision, the opportunity, almost a temptation, certainly exists. We must decide when the potential is so great that the line must be drawn.

The actual conflict of interest is prohibited by law.[2] The challenge to this task force was to draw the distinctions and recommend the policy in the appearance and potential situations. The task force developed a definite philosophy of erring on the side of over-protecting the public interest. For example, Rule 3 states that if an employee participated in the development of a proposal for an organization prior to employment with the Agency, that organization shall be, in effect, ineligible to receive the grant or contract. This is so whether or not the person as an employee of ACTION has anything to do with the grant or contract. Likewise the rule on prior association will cause administrative difficulties in certain cases. In a particular instance the result may appear to be unfair or unduly harsh to an employee or organization. The task force attempted to balance the effect on the individual or organization with the necessity of insuring that public employees are keepers of the public trust in appearance as well as in fact.

RULE 1—PRIOR ASSOCIATION

INTRODUCTION

This rule is concerned with an employee's participation in the decision to award a grant or contract to an organization with which he or she was previously associated. The proposed rule is designed to close the loopholes in the existing rules.

CURRENT RULE

No employee may advise, recommend or otherwise participate in a decision with which ACTION concludes its consideration of a grant or contract application which the employee, prior to his ACTION appointment, helped to develop. It is not improper, however, for the employee to contribute his special knowledge to the ACTION officers making the decision.

PROPOSED RULE

(a) No employee, or any person subject to his or her supervision, may participate in the decision to award a grant or a contract to an organization with which that employee, has been associated in the past two years. When an employee becomes aware that such an organization is under consideration for or has applied for a grant or a contract with the Agency, the employee shall notify his or her immediate supervisor in writing. The supervisor shall take whatever steps are necessary to exclude the employee from all aspects of the decision processes regarding the grant or contract.

(b) When the Director, Deputy Director, or an Associate or Assistant Director, becomes aware that an organization with which he or she has been associated is under consideration for or has applied for a grant or contract with the Agency, he or she shall refrain from participating in the decision process and immediately notify the Assistant Director of the Office of Compliance, who shall select an independent third party, not in any way connected or associated with the concerned official. The third party shall participate in and review the decision process to the extent he or she deems necessary to insure objectivity and the absence of favoritism. Said third party shall preferably be a person experienced in the area of government contracts and grants. The third party shall file a report in writing with the Committee on Conflict of Interest stating his or her conclusions, observations, or objections, if any, to the decision process concerning the grant or contract, which document shall be attached to and become a part of the official record.

DISCUSSION

The current rule restricts an employee's participation in the decision process only if the employee has specifically participated in the development of the application for the organization prior to his or her ACTION appointment. Even then, it seems to encourage employees to contribute their "special knowledge." In the view of the task force, this restriction was too limited and inadequate and did not address the "appearance or potential" issues. Consequently, the task force proposes a rule which would prohibit an employee, or anyone subject to his or her supervision, from participating in the decision to award a grant or contract to any organization with which the employee has been associated in the past 2 years. In the case of the Director or Deputy Director, there is no lateral position to which the decisionmaking can be transferred. In the case of an Associate or Assistant Director, while it would be possible to insure that they do not actually participate in the decisionmaking process, it would be impracticable in many cases to remove the entire office under their direction from the process. Consequently, the proposed rule would re-

[2] 18 U.S.C. 208 prohibits an employee from participating in any matter in which he, his spouse, minor child or outside business associate has a financial interest.

quire that the person not participate in the decisionmaking process and that an outside party be appointed to review and monitor the process. The assumption is that the knowledge of an outside person's participation will have a preventive effect.

RULE 2—REPRESENTATION

INTRODUCTION

Under the current rule, a regular employee is prohibited from representing anyone before a court or government agency in a matter in which the United States is a party or has an interest. This would prohibit, for example, a regular employee from attending a meeting with Agency officials on behalf of a potential grantee. However, the rule for special employees contains the now well-known "60 day exception".

CURRENT RULE

He may not, except in the discharge of his official duties, represent anyone else in a matter pending before the agency he serves unless he has served there no more than 60 days during the past 365.

PROPOSED RULE

He or she may not represent anyone else in a matter pending before the Agency.

DISCUSSION

It will be recalled that a recent example involved this 60 day exception. The special employee was an employee of a potential grantee and contracting organization. The special employee formally represented the organization before the Agency on both of these matters while he was a consultant to the Agency. Although the investigation found no evidence of an actual conflict, that is, the consultant did not participate in the decision process to award the grant or contract to the organization for whom he worked, the appearance of and the potential for a conflict of interest is obvious and offensive from the point of view of sound public policy. These considerations dictate that the prohibition against a special employee representing an organization before the Agency be absolute.

RULE 3—EMPLOYMENT

INTRODUCTION

Although the previous rule prohibits employees from representing grantees or contractors before the Agency, it does not address the situation where a regular or special employee works for a grantee or contractor in a nonrepresentative capacity. It is further important to distinguish the situation where the Agency employee merely works for an organization from the one in which the employee actually works on behalf of the organization in preparing or developing the contract or grant application. A third issue involves the determination of the point in the contracting or grant application process that the prohibitions come into play.

CURRENT RULE

(a) *Regular.* No ACTION employee may be employed as an executive officer of any ACTION grantee or delegate agency. "Executive Officer" means a member of the supervisory staff who reports directly to the agency's governing board or to the staff director. Employment in a less senior position, and employment as a teacher or consultant, is not prohibited if consistent with the other provisions of this part.

(b) *Special.* A special Government employee may serve as executive officer of an ACTION grantee or delegate agency if he has not served ACTION for more than 60 days during the immediately preceding period of 365 days. However, he shall not in any event perform any service as an executive officer of a grantee or delegate agency during any part of any day on which he serves as an ACTION employee.

PROPOSED RULE

(a) *Regular employees.* (1) No regular employee may be associated with any ACTION grantee, contractor, or potential grantee or contractor. Any organization that is associated with a regular employee shall be suspended from consideration as a grantee or contractor. (See rule 4(4) for the exception process.)

(2) No regular employee, except in his or her official capacity, as an ACTION employee, shall participate in any way on behalf of any organization in the preparation or development of a grant or contract proposal involving ACTION. In the event that a regular employee participated either prior to or while an employee of ACTION in any aspect of the development of a grant or contract proposal on behalf of an organization, that organization shall be suspended from consideration for the grant or contract.

(b) *Special employees.* (1) No special employee shall participate on behalf of an organization in any aspect of the development of a contract, proposal or project to be submitted to ACTION.

(2) If the special employee participated in the development of the organization's proposal or a grant or contract to be awarded by the Agency, or if the individuals subject to his or her supervision participated in the development of the organization's proposal, said organization shall be suspended from consideration for the grant or contract.

(3) If the special employee participated as an employee of ACTION in any aspect of the development of the proposal or project, whether or not such participation was minimal or substantial, any organization with which he or she is associated shall be suspended from consideration for the grant or contract.

(4) If an organization with which a special employee is associated submits a proposal for a grant or contract, and the special employee did not participate either as an employee of ACTION or an associate of the organization in any aspect of the project or proposal or the application therefor, the matter shall be referred to the Committee on Conflict of Interests for determination. The Committee shall consider the following factors and any others it deems relevant:

(i) The nature, length and origin of the special employee's relationship with the Agency, the nature and scope of the employee's duties and responsibilities, the division or office to which the employee is assigned, and whether the employee's duties are in any way related to the proposed grant or contract.

(ii) The nature, length and type of the employee's relationship with the organization, whether the employee's position involves policy making or supervision of other employees and the relationship of the position with the organization to the work to be performed under the proposed grant or contract.

(iii) Whether awarding the grant or contract to the organization would result in the appearance of or the potential for a conflict of interest.

(iv) The process to be used in awarding the grant or contract.

(c) Any suspension involving proposed contracts imposed under this rule shall be in accordance with procedures set forth in 41 CFR, 1-1.600 et seq.

DISCUSSION

The current rule is clearly deficient in several respects. For regular employees, it simply prohibits their employment with a grantee as an executive officer, and in fact explicitly condones their employment as a teacher or consultant. It applies only to grantees and not contractors. Most importantly, it does not consider the fact of whether or not the employee actually worked on the develoment of the grant proposal for the organization. It also does not address the situation where an employee worked on a proposal for an organization prior to working for ACTION or where an employee worked on a grant application before it was submitted. Thus under the current rule, a person could develop a grant proposal for an organization and subsequently be employed in

a reviewing position by the Agency. Also, an employee could develop the grant application for an organization as long as he or she was not an executive officer after the grant was awarded. And as stated above, there ar no rules regarding actual or proposed contractors.

The proposed rule would prohibit a regular employee from being "associated with" any ACTION grantee, contractor, or potential grantee or contractor. Thus a regular employee would be absolutely prohibited by this provision from serving as an officer, director, employee or consultant to a grantee or contractor. A potential grantee or contractor is defined as an organization which has submitted a proposal, application, or otherwise indicated in writing its intent to apply for a specific grant or contract. Once a grantee submits a proposal, any employee of this Agency would be required to resign as an employee, officer or director of the organization.

Not dealt with in (1) is the situation where an employee of the organization works on the grant proposal before it is submitted. The second paragraph attempts to cover this by prohibiting any ACTION employee from participating on behalf of any organization in the preparation of a grant or contract proposal involving ACTION.

Special employees present a more difficult situation. The first sentence of the proposed rule prohibits a special employee from participating in grant or contract development for an organization while serving as a special employee. The second sentence states that if the special employee participated in the development of the proposal or contract, either before or while working at ACTION, the grantee or contractor is suspended from consideration for the grant or contract.

If a special employee participates in the development of any aspect of a grant or contract proposal on behalf of ACTION, no organization with which the special employee is associated shall be eligible for consideration for the grant or contract.

Rule 4—The Committee on Conflict of Interests

INTRODUCTION

This rule provides for the creation of a permanent Committee on Conflict of Interests. The task force was of the view that a permanent committee was required to ensure that the new rules are implemented and followed on a continuing basis.

PROPOSED RULE

The Committee on Conflict of Interests is established for the purpose of reviewing and monitoring the Agency's policies and procedures on conflict of interests. The Committee shall consist of the General Counsel, the Assistant Director of Administration and Finance, the Assistant Director of the Office of Compliance, the Director of Contracts and Grants Management Division, a Deputy Associate Director of Domestic Operations, a Deputy Associate Director for International Operations, a Deputy Associate Director for the Office of Policy and Planning, and the Director's designee, who shall be a nonvoting member. The Committee shall have the authority to:

(1) Adopt the procedures necessary to insure the implementation and compliance with these rules.

(2) Issue interpretative opinions or clarifying statements on actual or hypothetical situations involving these rules.

(3) Accept and review reports filed under Rule 1(b).

(4) Grant specific relief from the provisions of Rules 3, 5, and 6, by a majority vote of the Committee, if, after due consideration, the committee finds that: (1) No actual conflict of interest exists, and (2) the purpose of the rule would not be served by its strict application, and (3) a substantial inequity would otherwise occur. In each such case the Committee shall issue a written decision setting forth its findings as required above. The Committee may make any exception subject to such conditions and restrictions as it deems appropriate.

DISCUSSION

The Committee will be charged with developing the internal Agency procedures to implement and monitor the rules. The Committee will also periodically review the adequacy of the existing rules and policies. It is also anticipated that the Committee can issue clarifying or interpretive statements from time to time.

In considering the enforcement provisions of the proposed rules, particularly Rules 3 and 5, the Committee felt that the best policy was to declare certain conduct to be prohibited, impose severe penalties such as suspension, and provide by a separate rule for a procedure to grant relief from a particular provision in a specific fact situation. Thus the Committee is empowered to grant an exception to a rule, but only by a majority vote and only if all three requisite findings are made. Rather than writing an exception into each rule to deal with the unusual circumstances, the proposed rule would require the person seeking an exception to present the case to the Committee based on the facts of that situation. The committee could place whatever conditions or restrictions on an exception that it felt appropriate.

Rule 5—Employment After Leaving ACTION

INTRODUCTION

This rule attempts to deal with the "revolving door" syndrome where employees leave the agency to work for grantees or contractors. The current rules are the same for both special and regular employees. The rule prohibits an employee from ever representing anyone on a matter in which the United States has an interest if the employee had previously "participated personally and substantially for the government" on the matter. On matters which only fall "within the boundaries of his official responsibility," the employee is prohibited from representing anyone for one year after completion of his or her government service. As with rule 3, this rule fails to address the situation of an employee who leaves and works for a grantee or an ACTION project in a non-representative capacity. Thus, under the current rule, an ACTION employee could develop and award a grant to an organization and then work for the organization on the project as long as he or she did not represent the organization before the agency.

The proposed rule would prohibit an employee from working for one year in any activity supported by ACTION funds if the program was within the official responsibility of the employee or if he or she participated personally in the program while at ACTION. The task force considered a flat prohibition against an employee working in any position supported by ACTION funds for a year, but the consensus was that it would be unfair to prohibit someone who worked in international operations, for example, from going to work for a VISTA sponsor. As a means of enforcing this rule, the Committee adopted two remedies: (1) The costs allocated under the grant or contract for a position filled by a former employee in violation of this rule will be disallowed; (2) A letter describing the violation will be placed in the employee's personnel file.

PROPOSED RULE

For one year after leaving ACTION, no regular or special employee may accept employment with an ACTION grantee or contractor for a position in which he or she would be working in any activity supported in whole or in part by ACTION funds received under an ACTION program which was within the boundaries of the employee's official responsibility or in which he or she participated personally while employed at ACTION.

If, within one year after leaving ACTION, an individual accepts employment in violation of this rule, ACTION will disallow the costs allocated under the grant or contract for

that position. In addition, a letter describing the violation will be placed in the employee's personnel file.

RULE 6

In its review process the Committee discovered a difficult issue not currently addressed by the standards of conduct. The agency enters into contracts with individuals that do not bring them within the definition of an employee. For example, in the area of training, the agency is tending toward the use of non-personal service contracts. There is a likelihood that individuals hired under these contracts may also be employees of a grantee or contractor. The issue is not one of conflict of interests in a classic sense, but more one of the possibility of an individual receiving dual compensation from the government for the same work. For example, it is possible that an individual employed as a trainer by an ACTION grantee may also be hired by ACTION to develop a training program. To avoid dual compensation, the task force proposed a rule which would prohibit the Agency from entering into a personal or non-personal services contract with any employee of an ACTION grantee if this would result in the employee being paid twice for the same time or work.

PROPOSED RULE

An employee of an ACTION grantee or contractor who is compensated directly or indirectly from ACTION funds will be ineligible to be compensated under any personal or non-personal services contract with this Agency which will result in the employee being paid twice for the same time or product.

RULE 7—PROCEDURES AND IMPLEMENTATION

INTRODUCTION

Rule 7 sets forth the internal procedures designed to insure the implementation of these rules. Based on past experience, the task force deems it necessary to assign specific responsibilities to specific offices to minimize slippage in the process. Paragraph (1) requires that all special employees, and those regular employees otherwise required, complete and submit Financial Statements within five days of entrance on duty. In addition to requiring inclusion of associated organizations in the past two years, this rule requires special employees to indicate those organizations which are currently contractors with or grantees of the Agency. Paragraph (2) sets forth the procedures for resolving conflict of interests, paragraph (3) details the process by which the list of organizations will be cross-checked with grantees and contractors, and (4) requires that all potential grantees or contractors will be notified of the relevant portions of these rules. The proposed rule is as follows:

(1) All special employees and those regular employees designated in these rules shall complete Statements of Employment and Financial Interests and submit them to the Office of General Counsel not later than five days after their entrance on duty. The Director of Personnel Management shall be responsible for supplying all new employees with the necessary forms either prior to or on the first day of their employment. The Statement of Employment and Financial Interests shall include information on organizations with which the employee was associated during the two years prior to his or her employment by ACTION, as well as information about current associations. Special employees shall also indicate to the best of their knowledge which organizations listed currently on their form have contracts with or grants from ACTION, or are applying for ACTION contracts or grants.

(2) The Office of General Counsel shall review all statements and forward the names of all listed organizations to the Director of Contracts and Grants Management. In addition, if the information provided in the statement indicates on its face a real, apparent or potential conflict of interest under the Agency Standards of Conduct, the General Counsel will review the situation with the particular employee. If the General Counsel and the employee are unable to resolve the conflict to the General Counsel's satisfaction, or if the employee wishes to request an exception to any of the Agency rules, the case will be referred to the Committee on Conflict of Interests. The Committee is authorized to recommend appropriate disciplinary action to the Director.

(3) The Office of Contracts and Grants Management shall maintain a list of all the organizations with which employees are or have been associated, as well as a list of all current grantees of and contractors with the Agency. When names of organizations with which new employees are or have been associated are submitted to the Grants office, they shall be checked against the list of current grantees or contractors. Similarly, before any new grants or contracts are awarded, the names of the potential grantees and contractors will be checked against the master list of organizations with which employees are or have been associated. Any real, apparent or potential conflicts which come to light as a result of these cross checks will be referred to the Office of General Counsel for review. The General Counsel will proceed as in paragraph (2) above, referring the matter to the Committee on Conflict of Interests if necessary.

(4) Whenever an organization submits a proposal or application or otherwise indicates in writing its intent to apply for or seek a specific grant or contract, ACTION shall immediately forward a copy of the Agency Standards of Conduct to that organization and shall note which particular rules apply to potential grantees and contractors.

(5) Whenever a regular or special employee terminates his or her employment with ACTION, the Office of Personnel Management shall provide that employee with a copy of the rule which restricts a person's employment for a period of one year after leaving ACTION. Personnel shall also notify the Office of General Counsel when an employee terminates. One year after the date of termination General Counsel will instruct the Office of Grants and Contracts Management to remove from the master list any organizations with which the terminated employee was associated. Two years after the date of termination, General Counsel will destroy the Statement of Employment and Financial Interests.

RULE 8—DEFINITIONS

(1) "Organization" as used herein includes profit and non-profit corporations, associations, partnerships, trusts, sole proprietoryships, foundations, and state and local government units.

(2) "Grantee" as used herein means any organization that receives financial assistance from ACTION including the assignment of Volunteers.

(3) "Potential Grantee or Contractor" means any organization that has submitted a proposal, application or otherwise indicated in writing its intent to apply for or seek a specific grant or contract.

(4) "Associated with" means:

(a) That the person is a director of the organization or is a member of a board or committee which exercises a recommending or supervisory function in connection with an ACTION project.

(b) That the person or his or her spouse, minor child or other member of his or her immediate household, serves as an employee, officer, owner, trustee, partner, consultant, or paid advisor;

(c) That the person, his or her spouse, minor child, or other member of his or her immediate household, owns individually or collectively 1% or more of the voting shares of an organization;

(d) That the person, his or her spouse, minor child, or other member of his or her immediate household, owns, individually or collectively either benefically or as trustee, a financial interest in an organization through stock, stock options, bonds, or other securities, or obligations, valued at $50,000 or more; or

(e) That a person has a continuing financial interest in an organization, valued at $5,000 or more, through an arrangement resulting from prior employment or business or professional association.

The term "associated" does not include an indirect interest, such as ownership of shares in a mutual fund, bank or insurance company, which in turn owns an interest in an organization which has, or is seeking or under consideration for a grant or contract.

Issued in Washington, D.C., on March 30, 1978.

JIM DUKE,
Executive Officer, ACTION.

[FR Doc. 78-8876 Filed 4-3-78; 8:45 am]

[6050-01]

[45 CFR Part 1231]

INTELLIGENCE POLICY

Proposed Revision and Consolidation of Regulations

AGENCY: ACTION.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: In order to avoid providing any credence to charges that the Peace Corps is a front for intelligence activities of the United States Government, the Peace Corps has had a longstanding policy of considering persons with prior intelligence involvement as ineligible for voluntary service or employment. This policy has been implemented through agency regulations which applied separately to volunteer and employee applicants. The proposed rules are intended to consolidate the policy in one regulation which applies uniformly to staff and volunteers, sets forth the grounds for disqualification with greater specificity, establishes procedures for the screening of applications, and provides for an appeal by excluded applicants. The proposed regulations would supersede existing regulations on the subject when implemented.

DATES: Comments must be received by May 4, 1978. 5:15 p.m., e.s.t.

ADDRESS: Comments should be sent to Office of the General Counsel, ACTION, 806 Connecticut Avenue NW., Washington, D.C. 20525, 202-254-3116.

FOR FURTHER INFORMATION CONTACT:

Harry MacLean, General Counsel, ACTION, 806 Connecticut Avenue NW., Washington, D.C., 202-254-3116.

SUPPLEMENTARY INFORMATION: ACTION's current intelligence regulations (MS 201 and ACTION Order 300.5) are not consistent in their application of the policy to volunteers and staff. Although both impose a permanent bar on former CIA employees, and a 10 year bar on persons previously employed in intelligence agencies or involved in "intelligence activities," applicants for employment are automatically eligible after the expiration of the 10 year period, while volunteer applicants are subject to a case by case review to determine whether a further period of ineligibility is warranted. In addition, language pertaining to the degree of involvement with the CIA or other intelligence activity necessary to disqualify applicants is different in each regulation. This has resulted in technical difficulties in enforcing the policy in an even handed manner. Finally, neither regulation defines the term "intelligence activity," or the criteria for disqualification, with sufficient specificity, and procedures have not been developed for a consistent review process.

To correct these problems the new regulations, which are designed to be prospective in their application, contain the following changes:

(1) Volunteer and staff applicants are subject to the same standards for determining whether their background should result in their exclusion.

(2) Terms such as "intelligence activity," "related work" and "employment" and criteria for determining disqualification have been defined to ensure uniform application of the policy.

(3) The permanent exclusion has been extended to include specifically named agencies, in addition to the CIA, whose missions are deemed to be primarily in the intelligence field.

(4) The 10 year exclusion now applies to a number of explicity named agencies which are considered, for the purposes of the policy, to perform substantial intelligence functions. Other agencies may be subsumed under this category on a finding that they too are substantially involved in intelligence activities.

(5) Two new categories of exclusions are added.

(a) Persons actually involved in intelligence activities of an operational nature, either gathering intelligence in the field or training or directing others in such work, are permanently excluded. This category is designed to cover intelligence operatives employed by agencies not otherwise deemed to be intelligence agencies and persons who perform missions for intelligence agencies without actually being employed by them.

(b) Persons having a connection, direct or indirect, with an intelligence agency which could be the basis of an inference that they were directly engaged in intelligence activities are barred for a period of time determined adequate to remove the possibility of such an inference. This category is designed to cover persons such as immediate relatives of highly placed intelligence officials or members of organizations like Air America which are known to be funded or controlled by the CIA.

(6) The policy has been extended to cover contractors and subcontractors where the purpose of the contract bears a direct relationship to Peace Corps operations. It does not, however, cover procurement contracts for items commonly used throughout the government including the intelligence community.

(7) A procedural section has been added to the regulation to insure adequate notice of the policy to volunteer and employee applicants, to provide specific screening procedures for applications and contracts, and to provide a right of appeal to excluded applicants. A portion of this section outlines a review procedure for determining which ACTION positions created in the future in ACTION support offices will be covered by the policy. The criterion for determining which positions are covered is whether the job bears a direct and substantial relationship to operations under the Peace Corps Act.

Title 45, chapter XII is proposed to be amended by adding a new part 1231 to read as follows:

Part 1231—ACTION Rules Regarding the Eligibility of Persons With Intelligence Backgrounds for Volunteer Enrollment or Employment

Sec.
1231.1 Purpose.
1231.2 Policy.
1231.3 Applicability.
1231.4 Definitions.
1231.5 Persons ineligible for volunteer service or Employment.
1231.6 Contractors and contractors' employees ineligible because of present or prior association with intelligence agencies or intelligence activities.
1231.7 Procedures for employment applicants.
1231.8 Procedures for volunteer applicants.
1231.9 Contracts.

AUTHORITIES: Sec. 1 of the Civil Service Act of 1940 (5 U.S.C. 3301), Executive Order 10577, Nov. 22, 1954, 19 FR 7521 and 5 CFR Parts 300 and 302; and sec. 5(a) of the Peace Corps Act of 1961 (22 U.S.C. 2503), Reorganization Plan No. 1 of 1971, (Mar. 24, 1971). Executive Order 11603, July 1, 1971, 36 FR 12675.

§ 1231.1 Purpose.

The purpose of this directive is to set forth the policy and procedures of ACTION In regard to volunteer enrollment and staff employment of persons who have been previously employed by intelligence agencies or who have previously engaged in intelligence activities. The directive sets forth with maximum possible specificity the relevant guidelines and criteria so that

uniformity, consistency, and fairness can be achieved in the application of the policy to individual situations. It is designed to be prospective in application and, therefore, will not affect the current Peace Corps volunteers or ACTION staff members.

§ 1231.2 Policy.

(a) It is the policy of ACTION to exclude from Peace Corps Service as a volunteer or an employee any person who has engaged in intelligence activity or related work or who has been employed by or connected with an intelligence agency. The policy also sets forth certain prohibitions and restrictions relating to contractual relationships with persons or firms who are or who have engaged in intelligence activities or related work.

(b) This policy is founded on the premise that it is crucial to the ability of the Peace Corps in carrying out its mission that there be a complete and total separation of Peace Corps from the intelligence community. Any semblance of a connection between Peace Corps and the intelligence community would seriously compromise the ability of the Peace Corps to develop and maintain the trust and confidence of the people of the host countries. It is therefore critical that this separation be complete both in reality and appearance.

(c) The policy recognizes that it is the perception of host countries in regard to the separation of the Peace Corps from the intelligence community that is the critical reality, and that therefore restrictions must be designed to insure that there is not the slightest basis for the appearance of any connection between Peace Corps and the intelligence community. It is for this reason that the policy contains certain absolute bars and that doubts are to be resolved in favor of exclusion.

(d) It is also the policy of Peace Corps to seek agreement from intelligence agencies and other agencies engaged in intelligence activities not to employ former Peace Corps employees or volunteers for a specified period after their Peace Corps service or employment.

§ 1231.3 Applicability.

This directive applies to:

(a) *Volunteers.* All applicants for enrollment as volunteers in programs authorized by the Peace Corps. The term "volunteer" as used in this regulation shall include volunteer leaders.

(b) *Employees.* (1) All applicants for employment by ACTION in positions authorized by sections 7 or 13 of the Peace Corps Act.

(2) All applicants for employment by ACTION in any other position which has been or will be determined by the Director or his or her designee to bear a significant relationship to operations under the Peace Corps Act, in accordance with § 1231.7(d).

(3) "Applicant" as used in this subparagraph means an individual being considered for employment, transfer, promotion, demotion, or reassignment.

(c) *Contractors.* All organizations or individuals with whom ACTION enters into a contractual relationship for goods or services determined by the Director of ACTION or his or her designee to have a significant relationship to operations under the Peace Corps Act.

§ 1231.4 Definitions.

(a) *Intelligence Activity.* "Intelligence Activity" includes any activities or specialized training involving or related to the clandestine collection of information, or the analysis or dissemination of such information, intended for use by the United States government in formulating or implementing political or military policy in regard to other countries. The term "intelligence activity" includes any involvement in covert actions designed to influence events in foreign countries.

(b) *Clandestine.* The term "clandestine" means activities conducted in such a way that the role of the United States is not apparent to the general public.

(c) *Intelligence Agency.* The term "Intelligence Agency" means those governmental organizations or divisions of organizations whose exclusive or principal function is the performance of intelligence activities.

(d) *Related Work.* The term "related work" means any employment by or other connection, either formal or informal, direct or indirect, with an intelligence agency or with an intelligence activity, if such activity could be the basis for an inference that the individual involved was directly engaged in an intelligence activity.

(e) *Employment.* The term "employment" as used herein means the existence of a relationship of employer and employee, whether full-time or part-time, without regard to the length of time the relationship existed, or is proposed to exist.

§ 1231.5 Persons ineligible for volunteer service or employment.

(a) *Persons permanently ineligible because of prior employment.* Any person who has been employed at any time by any of the following agencies shall be permanently ineligible for consideration for service as a volunteer under the Peace Corps Act or for employment by ACTION in the positions described in paragraph (b) of § 1231.5.

Central Intelligence Agency (CIA)
Defense Intelligence Agency (DIA)
National Security Agency (NSA)
National Security Council
Central intelligence Group (CIG)
National Reconnaissance Office (NRO)—Satellite Reconnaissance
The Office of the Director of Central Intelligence

(b) *Persons ineligible for 10 years because of prior employment.* Any person who had been employed by an agency or division of an agency a substantial part of whose mission includes intelligence activities, shall be ineligible for service as a volunteer or for employment by ACTION in the positions described in paragraph (b) of § 1231.3 for a period of 10 years from the end of the last employment by such agency. Individuals may be ineligible for service for a period in excess of 10 years where their background or work history with regard to intelligence warrants such action. (See paragraphs (c) and (d) of § 1231.5.) It appears that the following organizations have at times had as their mission duties which involve substantial intelligence activities for the purposes of the policy set forth herein:

Central Security Service (CSS)
Army Security Group
Air Force Security Service
Federal Bureau of Investigation—Counterintelligence
Defense Investigative Service
Bureau of Intelligence and Research—Department of State
Army Intelligence Agency (USAINTA)
Navy Intelligence Command (NIC)
Air Force Intelligence Service (AFIS)
Naval Investigative Service (NIS)
Air Force Office of Special Investigation (AFOSI)
Intelligence elements of the Department of the Treasury, the Department of Energy, and the Drug Enforcement Administration
Tactical intelligence components of combat units of the Armed Services

The foregoing list may not include all agencies whose assigned missions may be deemed to include substantial intelligence activities for the purposes of this policy. Determinations with respect to other agencies or divisions of agencies will be made on a case-by-case basis by the Director of ACTION or his or her designee.

(c) *Persons permanently ineligible because of individual intelligence activities.* Any person who has ever participated in or directed intelligence acitivities on an operational level (including training others for these activities) shall be permanently ineligible for service as a volunteer under the Peace Corps Act or for employment by ACTION in any position described in paragraph (b) of § 1231.3.

(d) *Persons ineligible because of connections with intelligence activity or related work.* (1) Any person not disqualified under paragraphs (a), (b) or (c) of § 1231.5 whose background or work history discloses a substantial connection with an intelligence activity or related work shall be ineligible

to serve as a volunteer under the Peace Corps Act or as an employee of ACTION in the positions described in paragraphs (b) and (c) of § 1231.3 for a period of time (ordinarily not to exceed 10 years) to be determined in the manner specified in paragraph (b) of § 1231.7.

(2) *Criteria.* In determining whether an individual's connections with intelligence activities or related work render him or her ineligible for service or employment, or the duration of the ineligibility, the following criteria shall be applied as appropriate:

(i) Nature of activity or connection.
(ii) Public knowledge of the activity or connection.
(iii) Length of time the individual participated in the activity or work.
(iv) Length of time which has elapsed since the last connection.
(v) Where the activity or work was performed.
(vi) Nature of the connection with intelligence activity or related work.
(vii) Whether or not the activity involved contact with foreign nationals.
(viii) Whether the connection was known or unknown to the applicant at the time it occurred.
(ix) Agency with which the applicant was connected.
(x) Training received, if any.
(xi) Regularity of the contact, and nature of duties, if any.
(xii) Any other information which bears on the connection of an applicant to an intelligence activity or related work.

§ 1231.6 Contractors and contractors' employees ineligible because of present or prior association with Intelligence Agencies or intelligence activities.

(a) No contract or subcontract having a significant relationship to operations under the Peace Corps Act shall be awarded to an organization or individual who (1) currently is a contractor for an intelligence agency, (2) has ever engaged in intelligence or related work.

(b) No contractor or subcontractor shall assign the performance of any operational work or substantial responsibility for performance of a contract with ACTION which has a direct and important relationship to operations under the Peace Corps Act to any individual who (1) was ever an employee of an intelligence agency, or (2) has engaged in intelligence activity or related work within the meaning of this directive.

(c) Prior to entering into a contract which has a significant relationship with operations under the Peace Corps Act, each prospective contractor shall certify (1) that it is eligible to receive the contract under paragraph (a) of § 1231.6 and (2) that it will comply with the requirements of paragraph (b) of § 1231.6. (See § 1231.9).

§ 1231.7 Procedures for employment applicants.

(a) *Notice.* (1) All applicants for employment for positions covered by paragraph (b) of § 1231.3 will be required to provide sufficient information to permit a determination of their eligibility under this Order prior to their appointment.

(2) All vacancy announcements for positions subject to this regulation will contain the following notification:

45 CFR Part 1231 (ACTION Order 300.5) is applicable to this position. This Order prohibits the employment of certain persons previously engaged in intelligence activities or connected with intelligence agencies. Applications must be accompanied by a completed PC-1336 form, or narrative signed statement, indicating whether the applicant has been involved in or has had any connection with intelligence activities or related work and if so the nature and dates of his or her involvement. Failure to meet this requirement will result in the applicant being rated ineligible for consideration.

(3) In the case of vacancies for employment positions subject to this policy which are not filled through vacancy announcements, the Director of Personnel, or any individual assigned responsibility for recruiting to fill the vacancy, shall inform all applicants of the policy and require that they fill out a PC-1336 form or signed narrative statement indicating whether the applicant has been involved in or has had any connection with any intelligence activity or related work, and if so, the nature and dates of his or her involvement. Such information must be provided before the applicant is given consideration for the vacancy.

(4) Any applicant whose PC-1336 form or narrative statement does not indicate involvement in or connection with intelligence activities or related work, or a particular intelligence activity or work, but whose background contains an indication that he or she may be otherwise ineligible under this Directive will be sent a notification by the Personnel Management Division of the substance of this policy, and a request for further information. Any further investigation deemed necessary to determine the eligibility of an applicant for employment under this Order will be performed by the Employee Security Branch of the Personnel Management Division.

(5) Failure to disclose information relevant to a determination under this Order may result in disciplinary action up to and including removal.

(b) *Screening.* The Director of Personnel or his or her designee is responsible for the initial screening of applications for positions covered by this Directive. In cases where the Director of Personnel is unable to make a determination on the eligibility of an applicant, the individual's application will be referred to the General Counsel. In addition, in all cases falling within paragraph (c) of § 1231.5 above, the General Counsel will make the final determination as to eligibility. In cases falling within paragraph (d) of § 1231.5 the General Counsel will be responsible for convening a panel composed of the Director of the Peace Corps, the Assistant Director/AF and the General Counsel, or their designees, to determine whether the applicant is eligible.

(c) *Appeal.* (1) The Director of Personnel will inform all applicants promptly in writing of any decision disqualifying them and the basis for that decision. Applicants will also be informed that they have 15 calendar days from the date of receipt of the letter from the Director of Personnel to appeal the decision to the Director of ACTION. The decision of the Director of ACTION shall be final.

(2) Individuals who would otherwise have been within the range of selection who have applied for positions filled under ACTION's merit promotion plan, (ACTION Order 335) and whose appeals are sustained, shall be granted priority consideration equal to that given to repromotion eligibles for the next similar position for which they are qualified.

(d) *Determinations as to covered positions.* (1) On or before the effective date of this Order, the Office of the General Counsel will provide the Director of Personnel a written list of established positions which have been determined to bear a significant relationship to operations under the Peace Corps Act.

(2) The Director of Personnel shall be responsible for forwarding all proposed new position descriptions, to the Director of ACTION or his or her designee requesting a determination as to whether the position bears a significant relationship to activities under the Peace Corps Act.

(3) The Director of Personnel shall be responsible for maintaining records of all determinations made and for annotating all position descriptions as to the determination.

§ 1231.8 Procedures for volunteer applicants

(a) *Notice.* (1) All applicants for volunteer service in programs covered by paragraph (a) of § 1231.3 will be required to provide sufficient information to permit a determination of their eligibility under this Order prior to their selection for Peace Corps assignment.

(2) ACTION recruiters will be responsible for explaining the importance of the intelligence policy to all applicants and directing their attention to the appropriate section of the Peace Corps application which pertains to the policy.

(3) Any applicant whose Peace Corps application does not indicate involve-

ment in or connection with intelligence activities or related work, or a particular intelligence activity or work, but whose background contains an indication that he or she may be ineligible under this Directive will be sent a notification by the Office of Volunteer Placement of the substance of this policy and a request for further information. Any further investigation deemed necessary to determine the eligibility of an applicant for Peace Corps service will be performed by the Office of Volunteer Placement.

(4) Failure to disclose information relevant to a determination under this Order may result in the disinvitation or separation of the individual from the Peace Corps.

(b) *Screening.* The Office of Volunteer Placement is responsible for the initial screening of Peace Corps volunteer applications. In cases where that office is unable to make a decision regarding the eligibility of an applicant under this Order, the individual's application will be referred to the general counsel for determination.

(c) *Appeal.* (1) The Office of Volunteer Placement will inform all applicants promptly in writing of any decision to disqualify them and the basis for that decision. Applicants will also be informed that they have 15 days from the date of receipt of the letter from the Office of Volunteer Placement to appeal the decision to the director of the Peace Corps. The decision of the Director of the Peace Corps shall be final.

(2) Individuals who otherwise would have been eligible for selection for a Peace Corps program and whose appeals are sustained, shall be granted priority consideration for the next program for which they are qualified.

§ 1231.9 Contracts.

(a) All contracts entered into by ACTION which have a direct and important relationship to operations under the Peace Corps Act will contain a provision certifying that:

The contractor has read the provisions of this directive, is not currently a contractor for an intelligence agency, and has never engaged in intelligence activities[1] or related[2] work. Further, the contractor must agree not to assign any individual to perform work under the contract who was ever an employee of an intelligence agency, or has engaged in intelligence activity or related work.

(b) Contracts to which paragraph (a) of § 1231.6 is applicable shall require the contractor to include the provisions required by that paragraph in each subcontract thereunder and to take such action as the contracting Officer may direct to enforce such provisions.

(c) The Director of Contracts and grants Management will be responsible for ensuring compliance with these provisions.

Issued in Washington, D.C., on March 30, 1978

JIM DUKE,
Executive Officer, ACTION.

[FR Doc. 78-8873 Filed 4-3-78; 8:45 am]

[1] Intelligence Activity—Includes any activities or specialized training involving or related to the clandestine collection of information, or the analysis or dissemination of information, intended for use by the United States Government in formulating or implementing political or military policy in regard to other countries. The term "intelligence activity" includes any involvement in covert actions designed to influence events in foreign countries.

[2] Related Work—Means any employment by or other connection, either formal or informal, direct or indirect, with an intelligence agency or with an intelligence activity, if such activity could be the basis for an inference that the individual involved was directly engaged in an intelligence policy.

[6712-01]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Parts 63 and 64]

[CC Docket No. 78-95; CC Docket No. 78-96; FCC 78-184]

GRAPHNET SYSTEMS, INC.

Regulatory Policies Concerning the Provision of Domestic Public Message Services by Entities Other Than Western Union Telegraph Co.

AGENCY: Federal Communications Commission.

ACTION: Notice of Inquiry and Proposed Rule Making.

SUMMARY: FCC institutes inquiry and proposed rule making to establish policy on offering of domestic public service by entities other than Western Union Telegraph Co. Inquiry was percipitated by an application filed by Graphnet Systems, Inc.

DATES: Comments must be received on or before June 1, 1978, and Reply Comments must be received on or before July 3, 1978.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Donald R. Bustion II or Robert James, Domestic Branch, Common Carrier Bureau, 202-632-6440 or 632-6920.

MEMORANDUM OPINION AND ORDER AND NOTICE OF INQUIRY AND PROPOSED RULE MAKING INSTITUTING INVESTIGATION

Adopted: March 9, 1978.

Released: March 28, 1978.

By the Commission: Chairman Ferris issuing a separate statement.

In the matter of Graphnet Systems, Inc., Application to Participate in the Hinterland Delivery of International Communications Messages, CC Docket No. 78-95, File No. W-P-C-1430; Regulatory Policies Concerning the Provision of Domestic Public Message Services by Entities Other than the Western Union Telegraph Co. and Proposed Amendment to Parts 63 and 64 of the Commission's rules, CC Docket No. 78-96.

1. The Commission hereby institutes an inquiry into the above-captioned application of Graphnet Systems, Inc. and gives notice of an inquiry and proposed rule making looking toward the formulation of appropriate policies in the above-captioned matter.

I. THE SECTION 214 APPLICATION

2. The Commission has pending before it a Section 214 application filed on June 23, 1977, by Graphnet Systems, Inc. (Graphnet) for authority to provide certain communications services between the gateway locations of United States international record carriers (IRC's) and Graphnet subscribers located in the hinterland of the United States. According to Graphnet, it has entered into an Inter-Carrier Agreement with ITT World Communications Inc. (ITT Worldcom) which contemplates a "two-sided" service capability. As a result of this agreement, Graphnet's subscribers will be able to have their communications filed by Graphnet at one of ITT Worldcom's gateway sites for forwarding to overseas locations served by ITT Worldcom. The subscribers will incur the charges prescribed by ITT Worldcom's tariff. This agreement also contemplates that Graphnet will receive and distribute overseas originating messages handled by ITT Worldcom which are destined for Graphnet's subscribers.

Charges for such services would be in accord with those set forth in ITT Worldcom's Joint Tariff FCC No. 7 and settlements between the carriers will be pursuant to an agreed-on division of revenues.

3. Graphnet states that the interconnection with ITT Worldcom will be achieved by interconnecting their respective data network computers, thus allowing data messages to be passed between them. Upon reciept of the data, Graphnet's system will perform all error checking, speed and code conversions, and routing functions necessary to place the output of the communications on a receiving facsimile terminal, either at the subscriber location or at a Graphnet location. If the recorded output occurs at a Graphnet location, then the message will be delivered to the addressee either by telephone or by mail.

4. According to the agreement, outbound messages are presently deliver-

able as a result of the Commission's acceptance of Graphnet's tariff revisions which became effective January 7, 1977. Although Graphnet has also filed tariff revisions to implement the inbound aspect of the agreement, the Commission found that Graphnet did not have appropriate Section 214 authority to render such service and therefore rejected said tariff revisions, *Graphnet Systems, Inc.*, 64 FCC 2d 1021 (1977). Specifically, the Commission stated that:

> The current offering appears to be the mainland delivery of international public messages. The originator of a message would not necessarily be a Graphnet subscriber and could initiate the message at any public office overseas. Clearly, the message would originate as a public message. Graphnet's assertion that its current authorization permits it to participate in such service is without support. The proper method for determining whether it should be authorized to engage in the delivery of international public messages is for Graphnet to file an appropriate Section 214 application. We are not saying here that such an offering could not be found to serve the public convenience and necessity, but only that a tariff filing is not the appropriate procedure for obtaining consideration of this question. (64 FCC 2d at 1023 (1977).)

The subject application seeks the requisite authority to implement the inbound portion of the agreement. Graphnet on September 21, 1977, amended the application to (1) clarify its proposal with respect to the carriage of inbound international messages destined for its subscribers, requesting that the authorization be extended not only to that aspect of Graphnet's agreement with ITT Worldcom but also to any inter-carrier agreement that it may conclude with other IRC's;[1] and to (2) enlarge its initial proposal to include the delivery of inbound international messages destined for both subscribers and nonsubscribers.

5. The Western Union Telegraph company (WU) filed pleadings strongly opposing grant of the instant application; TRT Telecommunications Corporation (TRT) filed comments recommending the inclusion of certain conditions on any authorization the Commission may issue Graphnet; ITT Worldcom and RCA Global Communications, Inc. (RCA Globcom) filed comments urging favorable action on the captioned application. The application raises a significant number of policy issues.

COMMENTS

6. To support its opposition to the application, WU cites *Press Wireless*, 21 FCC 311 (1956), in which the Commission stated:

> * * * Although Western Union is not entitled as a matter of law to the exclusive grant of pick-up and delivery of international traffic in the hinterland, the obligation it has to provide such service at all times, whether traffic be heavy or light, carriers with it the privilege of continuing to provide service and reap the revenues of a heavy traffic volume unless it is unable to do so in a manner which will serve the public interest, or some other carrier will provide service which is so superior as to support a finding that a public interest would be served by a grant of its application. Any other course of action would enable the international carriers to pick and choose the times and places where they desire to provide service and incidentally reap the benefits thereof in revenue and leave Western Union with the obligation to provide service at all other times and places. We do not believe that such a policy on our part would serve the public interest. (Id. at 317.)

WU states that it maintains offices and agencies throughout the country in order to handle all inbound cable traffic tendered by the IRC's, whereas Graphnet is able to pick and choose from among the locations at which it wishes to maintain its offices. In addition, WU believes the applicant does not propose to offer a superior service, because the delivery options set forth in the application are inferior in terms of efficiency and flexibility to those offered by WU, and thus it feels that any conclusion which holds that its service is superior to that of WU is erroneous. WU also argues that the public will not realize the benefits of a rate reduction if Graphnet's proposal is implemented because it believes that only Graphnet and the IRC's will benefit by what WU characterizes as a cream-skimming proposal. Given these circumstances, WU contends that the principles established in *Press Wireless* preclude favorable action on this proposal.

7. WU also alleges that Graphnet's proposal will adversely affect its ability to provide a nationwide system of public message service. According to an affidavit provided by an official of WU, the implementation of Graphnet's total proposal may possibly reduce WU's net annual revenues by as little as $2,385,000 or by as much as $6,988,000, the latter figure being based on the assumption that Graphnet will acquire all of the hinterland traffic. In WU's view, such revenue losses will not be offset by any substantial reduction in costs (compensations for cost reductions already having been made in the above figures). Thus, the ultimate impact will be, at a minimum, a 10.6 percent loss in net revenue to the Western Union Corp. (based on 1976 net income) and the loss might ultimately range as high as 20.6 percent. WU also alleges that if it should lose any significant amount of landline haul traffic to Graphnet then it will be left with but two options, either: (1) To raise rates or (2) to reduce service quality for its remaining services—"services upon which many small non-business customers depend." Because of this impact and because WU believes that only the IRC's will benefit from Graphnet's proposed service offering, WU contends that the public convenience and necessity do not permit a grant of the subject application.

8. Finally, WU expresses the view that the Commission's interpretation of Section 222 of the Act in the *Free Direct Access* case[2] constitutes an independent bar to Graphnet's hinterland proposal. Although WU believes that the Commission has not precluded a re-examination of its previous interpretation, it has made clear that re-examination must occur in Docket No. 19660, and not in the piecemeal fashion which Graphnet proposes. WU also notes that Graphnet's proposal exceeds those of the IRC's in Docket No. 19660. While the IRC's are seeking to expand the number of gateway cities, WU says that, in effect, Graphnet's proposal completely ignores the gateway concept and would afford the IRC's direct access to any point in the United States. Although Section 222 appears to contemplate the Commission's designation of additional gateway cities, WU believes "the statute precludes the Commission from completely obliterating any distinction between the gateways and the hinterland." WU also argues that the Commission holds that Section 222 bars the type of interconnections proposed by Graphnet, and thus it contends that any contrary ruling can only be based on a Commission determination that the previous ruling was based on an incorrect legal interpretation of the law or on a change in policy.

9. TRT states that it finds Graphnet's agreements with ITT Worldcom and RCA Globcom to contain objectionable features which would adversely affect TRT by diverting outbound international message traffic from it to other IRC's. The provision in the agreements which causes TRT concern reads as follows:

> "To the extent that Graphnet may have agreements with other international record carriers concerning the same as similar arrangements as those contemplated herein, outbound unrouted communications forwarded by Graphnet to RCA pursuant to subparagraph 3.a. shall be distributed to RCA and such other international record carriers in the same proportion as the amount of each such carrier's 'discretionary inbound communications' handled by Graphnet bears to the total of such communications handled by Graphnet for all such carriers. For purposes of this paragraph, and paragraph 12, below, 'discretionary inbound communications' means those com-

[1] Graphnet has entered into a similar agreement with RCA Global Communications, Inc. (RCA Globcom).

[2] *International Record Carriers Communications* (Docket No. 19660), 40 FCC 1082 (1972).

munications destined for the hinterland as to which the originator has not designated a domestic delivery carrier by name." (Graphnet-RCA Agreement, ¶3.b.)(footnote omitted).)

TRT's Comments, page 2. TRT contends the effect of this provision will be to have Graphnet distribute unrouted outbound message traffic among ITT Worldcom and RCA Globcom on a basis in proportion to the inbound message traffic which the IRC's transfer to Graphnet. Assuming the accuracy of Graphnet's traffic projections, TRT believes that it may become necessary for it to enter into a similar agreement with Graphnet in order to avoid exclusion from the outbound message-stream generated by Graphnet. TRT contends such an agreement would place it at a disadvantage vis-a-vis its competitors and would not serve the public interest. In addition, TRT alleges that Graphnet's agreement with the two IRC's would avoid the arrangements derived under the international formula, and therefore it argues that the public interest would not be served because the proposal represents a threat to the integrity of the current distribution arrangements.

10. In rebuttal to WU's allegation of non-compliance with the principles outlined in *Press Wireless*, Graphnet indicates that its application is not inconsistent with those principles and it argues that WU's reliance on the decision is inappropriate. In that case, Graphnet argues that the Commission was confronted with a request from a specialized and certificated IRC for authority to lease and operate temporary wire telegraph facilities between its New York gateway and a temporary office in a domestic hinterland location. Graphnet observes that the Commission was there faced with the problem of whether or not an IRC should be allowed to establish a temporary office in the hinterland, not, as in this instance, whether or not a domestic carrier should be permitted to interconnect with an IRC for the delivery of inbound hinterland traffic. Graphnet contends that the *Press Wireless* decision, given its broadest interpretation, means that an IRC must acquire Commission authority under Section 222 of the Act to operate outside its authorized gateways. Graphnet further contends that *Press Wireless* did not convey to WU any exclusive right to hinterland distribution of inbound international message traffic. Graphnet states that, over a period of time the Commission has made repeated policy judgments and granted numerous carrier authorizations wholly at odds with the contention that new applicants must demonstrate a "superiority" to existing services. As a point of illustration, Graphnet cites the grant of its initial authorization, 44 FCC 2d 801 (1974) and Docket No. 20097 (*Resale and Shared Use of Common Services*, 60 FCC 2d 261 (1976)). According to Graphnet, in Docket No. 20097, the Commission chose to allow "open entry" of new carriers in the resale field without requiring a demonstration of how special benefits would be provided to the public. Should the *Press Wireless* "superiority principle" continue to be valid, then Graphnet believes that the Commission has previously found that its services are sufficiently superior to those of WU so as to allow for the authorization of the kind of competition which the services clearly represent.

11. Responding to WU's claim of adverse economic impact, the Applicant believes that such impact is of no public interest consequence because the Commission has clearly stated that WU has no exclusive rights in handling the hinterland portion of international traffic. To support this position, Graphnet refers to language from the Notice of inquiry in Docket No. 19660:

> [W]e wish to make it clear that none of our prior decisions with respect to the handling of traffic in the hinterland accepts the Western Union premise that it was granted some form of exclusive right with respect to the pick up and delivery of international message traffic beyond the gateway cities. We have in the past rejected such contentions. (38 FCC 2d 547 (1972).)

Thus the applicant declares that WU is not entitled to the presumption that revenue diversion is always a consideration contrary to the public interest. Although WU claims some economic impact, in Graphnet's view it had not shown how such an impact would impair its "ability to provide public telegraph and mailgram services to the public." Graphnet contends that within three years after implementation of the Graphnet/ITT Worldcom inbound subscriber service, diversion from WU would amount to $660,000, which represents less than 0.2 percent of either WU's overall operating revenues or its transmission revenues. Assuming an interconnection with all IRC's, Graphnet estimates the diversion to be $2,445,000 or 0.7 percent of WU's revenues. Graphnet believes that by its own actions, WU has diverted telegram to other WU services and thereby reduced revenues derived from telegram traffic. (Graphnet estimates this diversion to equal an average decline of $8 million per year.) Therefore, Graphnet believes that the potential diversion by its proposed inbound/to subscribers service represents only a fraction of the kind of diversion that WU has already determined to be acceptable through its own planned diversion of telegram traffic. Graphnet predicts that the implementation of its proposal to serve non-subscribers as well as subscribers will result in a third-year revenue diversion of $3.8 million from WU (assuming that Graphnet will receive 50 percent of the traffic involved). This figure represents less than 1.1 percent of either WU's overall operating revenues or its total transmission revenues.[3] Graphnet contends that WU cannot rebut its projections and therefore has resorted to questionable techniques and methodologies which yield a distorted view of the proposal's impact. To illustrate this contention Graphnet states:

> At bottom, Western Union would have the Commission believe that the total diversion of a traffic handling function which *lost* $6.5 million in 1976 will result in loss of *20 percent of net income* to Western Union's parent company. (Day Affidavit, p. 1; WU Petition, p. 3.) That astounding claim is made even more remarkable when it is realized that inbound international message traffic comprised less than 19 percent of Western Union's total message traffic; and message traffic in turn contributed only 11.2 percent to the total revenues to the parent company! On its face, Western Union's manipulation of data has yielded an entirely incredible result.[4]

In Graphnet's view, WU's telegram service has been steadily declining; therefore, any diversion resulting from the entry of a competitor into the market would have a progressively lesser impact on WU's overall financial posture.

12. The applicant also opposes WU's assertion that the so-called *Free Direct Access* decision, 40 FCC 2d 1982 (1975), bars the grant of its application or prohibits the interconnection between any other domestic carrier and the IRC's for the delivery of the hinterland portion of an international message on any basis comparable to that between WU and the IRC's. According to Graphnet, the *Free Direct Access* decision involved an IRC's tariff proposal whereby the IRC's absorbs the tariff charges of other carriers to permit access to customers in the hinterland. Graphnet contends that unlike the IRC's, it is seeking authority merely to establish a relationship with the IRC' analogous to the kind that WU currently utilizes "—interface at the gateway; transmission over distinct domestic network; mail or telephone delivery to the addressee; and postalized rate of revenue per message." Graphnet does not believe that the *Free Direct Access* decision applies to this type of relationship. Moreover, Graphnet does not believe that Section 222 of the Act interminably binds the IRC's to deal exclusively with WU. If the Commission deems that the Graphnet/IRC interconnection is expansion of gateways, then

[3] These conclusions are based on data taken from an economic impact study conducted by Barbara Epstein of Horace J. DePodmin Associates, Inc. commissioned by Graphnet.

[4] Opposition to Petition to Deny, filed December 9, 1977, p. 27.

Graphnet nevertheless concludes that the Commission can still approve of such arrangements without altering the meaning of Section 222.

13. Graphnet opposes TRT's recommendation requiring it to distribute outbound traffic pursuant to the international formula prescribed by the commission under Section 222(e) of the Act. According to Graphnet, a reading of that statute plainly indicates that the international formula was not meant to apply in this situation. In defense of its position Graphnet states "Thus Section 222(e)(1) applies only '[i]n the case of any consolidation or merger of telegraph carriers pursuant to this section * * *' Quite obviously, Graphnet is neither a merged nor a consolidated carrier, and thus Section 222 is simply inapplicable."

14. RCA Globcom also opposes TRT's request. It believes that the international formula was enacted solely to assure that WU, as a de facto monopoly, did not employ its position to favor one competitive international carrier over another. Further, RCA Globcom views the circumstances here to be distinguishable from those which motivated Congress to enact the formula, because Graphnet is not a monopoly record carrier and is not in a position to unduly favor any one international record carrier over the others. RCA Globcom asserts that the Commission has stated that "international record carriers are free to interconnect with any non-affiliated domestic carriers * * *" *Graphnet Systems, Inc.*, 63 FCC 2d 402, 409 (1977).

15. The comments of ITT Worldcom basically agree with those presented by Graphnet and RCA Globcom. ITT Worldcom makes the additional point that the users of international message services stand to be the real beneficiaries of Graphnet's proposal, and not, the IRC's, as claimed by WU. ITT Worldcom believes that the entry of another carrier into this market would serve as a restraint upon further increases in the cost of furnishing international message service and might serve as a stimulus for WU to undertake measures so as to control its everrising costs.

Discussion

16. The Commission has endorsed an open-entry policy with respect to most types of domestic record communications services,[5] the principal exception being public message telegraph service.[6] Since the enactment of the merger and consolidation legislation in 1943 (47 U.S.C. § 222), this service has been provided by WU exclusively. The legislative history of Section shows that the purpose of the amendment was to provide for the preservation of an efficient domestic telegraph system by permitting mergers or consolidations free from the inhibitions of the anti-trust laws. While the legislative debates will not support a claim that Section 222[7] extended to any single company the status of an absolute domestic record communications monopoly, it is clear that the Congress contemplated that a grant of permission to merge would inevitably result in the emergence of a single, unified domestic record carrier, at least for PMS. However, the Congress left it to this Commission to decide whether the public interest would be served by freedom from competition in any given instance.

17. In our 1943 opinion approving the contract of merger between WU and Postal Telegraph, a finding was made, after a full evidentiary hearing, that the public interest required the merged carrier to be given full monopoly status in the public message service. Specifically, we said that:

It has long been recognized that in many fields, competition normally provides assurance for the best service at the lowest possible cost to the public. The history of the domestic telegraph industry, however, indicates that competition between Western Union and Postal has not had the expected and desired effects. Competitive practices have resulted in useless paralleling of facilities, duplication of operations, and wasteful expenditures of resources and manpower. Such competition has, in a large measure, been responsible for the unsatisfactory financial condition in which both Postal and Western Union have found themselves during the course of the last decade or

---

[5] Among those record services that are presently open to competition are Wu's TELEX and TWX services. See *Western Union Telegraph Company*, 24 FCC 2d 673 (1970); *Specialized Common Carriers*, 29 FCC 2d 870, 912-914 (1971); and *Graphnet Systems, Inc.*, 61 FCC 2d 689 (1977). Also see *Packet Communications, Inc.*, 43 FCC 2d 922 (1973); *Graphnet systems, Inc.*, 44 FCC 2d 800 (1974); *Telenet Communications Corp.*, 46 FCC 2d 680 (1974); and *Resale and Shared Use*, 60 FCC 2d 261 (1976).

[6] Public message telegraph service is ordinary telegram service, in which the carrier * * * accepts either written or oral messages at a public office or via the public telephone network, transmits those messages to its public office in another city, and delivers the messages either in written or oral form to the designated recipient. No customer terminal equipment is required. Unlike the customer who uses public long distance telephone service, the telegram customer does not subscribe in advance to any service and get his premises connected to the netowrk. *Graphnet Systems, Inc.*, 64 FCC 2d 1023 (1977).

[7] The sources for the legislative history of Section 222 are extensive. In 1932, Congress called for a major study of the state of the domestic telegraph industry. See H.R. 59 and 572, 72d Cong., 2d Sess (1932). This study, conducted under the direction of Dr. Walter Splawn, was published in H.R. Rep. No. 1273, 73d Cong., 1st Sess. (1933). This report was supplemented by an intra-departmental report on communications made following suggestions by President Roosevelt to the Secretary of Commerce in 1933. Section 4(k) of the Communications Act of 1934 directed the Federal Communications Commission to "make a special report not later than February 1, 1935, recommending such amendments to this act as it deems desirable in the public interest." On January 31, 1935, the Commission transmitted to the Congress its recommendations for proposed amendments to the Communications Act. Chief among these was a proposal for a new Section 222 to provide for the permissive consolidation of telegraph companies. See H.R. Doc. No. 83, 74th Cong., 1st Sess. (1935). In 1938, Senator Neely submitted S. Res. 247 calling for an investigation of certain aspects of the wire communications industry. See also "Hearings on S. Res. 247 Before a Subcomm. of the Senate Comm. on Interstate Commerce," 75th Cong., 3d Sess. (1938). In 1939, Senator Wheeler introduced S. Res. 95 which proposed a similar investigation of the telegraph industry. See "Proposed Investigation of the Telegraph Industry: Hearings on S. Res. 95 Before a Subcommittee of the Senate Comm. on Interstate Commerce," 76th Cong., 1st Sess. (1939). In S. Rep. No. 529, 76th Cong., 3d Sess. (1939), the Committee recommended that the Resolution be adopted, and the Senate concurred. (June 19, 1939). The Senate Commerce Committee held extensive hearings on S. Res. 95 and pursuant to a request by the Committee, the Communications Commission submitted a lengthy report on the state of the domestic telegraph industry, which was printed as a part of the hearings record. See "The Condition of the Domestic Telegraph Industry: Hearings on S. Res. 95 Before a Subcomm. of the Comm. on Interstate Commerce," 77th Cong., 1st Sess., (1941). The results of this investigation were formally summarized in "Senate Committee on Interstate Commerce, A Study of the Telegraph Industry," S. Rep. 769, 77th Cong., 1st Sess. (1941). In 1942, Senators McFarland and White jointly introduced S. 2445 containing a proposed § 222. The bill was referred to the Commerce Committee and a subcommittee thereof held extensive hearings. "Consolidation and Mergers of Telegraph Operations: Hearings on S. 2445 Before a Subcomm. of the Senate Committee on Interstate Commerce," 77th Cong., 2d Sess. (1942). On June 16, 1942, the Senate Committee, by Report No. 1490 (77th Cong., 2d Sess.) reported S. 2598 in lieu of S. 2445, with the recommendation that it be passed. S. 2598. The bill was sent to the House of Representatives and there referred to the Committee on Interstate and Foreign Commerce, where a subcommittee held extensive hearings. See "Consolidations and Mergers in the Telegraph Industry: Hearings on S. 2598 Before a Subcomm. of the House Committee on Interstate and Foreign Commerce," 77th Cong., 2d Sess., (1942). The Committee recommended the S. 2598 to the full House on November 27, 1942 (H. Rep. No. 2664. 77th Cong., 2d Sess. (1942)), but the bill was not acted upon when it reached the floor because of a lack of a quorum. In the 78th Congress, Senator McFarland introduced a new bill, S. 158, which was identical to S. 2598, and it was approved by the Senate. See S. Rep. No. 13, 78th Cong., 1st Sess. (1943). In the House, the bill S. 158 was reported from the Committee with an amendment. H.R. Rep. No. 69, 78th Cong., 1st Sess. (1943). A conference committee reached a compromise which was agreeable to both houses. See 73 Cong. Rec. 1089, 1141-1146, 1193-1196.

more. Moreover, telegraph service appears to fall within the field of "natural monopolies", such as the telephone, power and gas distribution utilities, where it has actually been found by experience that one company adequately regulated can be expected to render a superior service at lower cost than that provided by competing companies.

The enactment of Section 222 of the Communications Act of 1934, as amended, was the culmination of a long period of study and deliberation by this Commission, by Congress, and various other government bodies concerned with the serious condition of the domestic telegraph industry. We need not here dwell, at any length, upon the reasons which impelled Congress, backed by the unanimous opinion of various interested government authorities, including the President of the United States, and the Secretaries of War, Navy and Commerce, to the view that competition within the domestic telegraph field could no longer be expected to yield the best service at the lowest cost to the public, and that the unification of the domestic telegraph operations of this country into a single company was in the general public interest and essential to the effective prosecution of the war. Such a unification will eliminate the destructive elements of competition within the domestic telegraph field, but will leave ample incentives for improved and more economical public service through competition between telegraph service and other forms of communication services. The public records themselves attest to the necessity of the step which the Commission is here asked to approve. (Docket No. 6517 10 FCC 148, 163 (1943).)

Thus the Commission exercised the descretion granted by Section 222 and found that the public interest would be served by a monopoly in domestic public telegraph service.

18. In later cases, the Commission similarly averred to this basic policy finding by continuing to find that the facts justified the preservation, in some instances, of WU's monopoly position. In each instance, the Commission exercised the discretion granted to it by Section 222 of the Act to find, on the record, that the facts presented did not, on an overall basis, justify a change in the status previously accorded to that carrier. For instance, in the *Press Wireless* decision (21 FCC 311 (1956)), we dealt with a request by another carrier for permission to initiate a service that would, in some respects, be in direct competition with already extant service offerings by WU. We there declined to overturn our previous finding that the public interest was best served by having one carrier able at all times to provide for a nation-wide, comprehensive domestic telegraph service, saying that:

> [I]t appears to us, that although Western Union is not entitled as a matter of law to the exclusive grant for pick-up and delivery of international traffic in the hinterland, the obligation it has to provide such service at all times, whether traffic be heavy or light, carries with it the privilege of continuing to provide service and reap the revenues of a heavy traffic volume, unless it is demonstrated that it is unable to do so in a manner which will serve the public interest, or some other carrier will provide service which is so superior as to support a finding that a public interest would be served by a grant of its application. (Id. at 317.)

Our statement that WU is not entitled as a matter of law to a monopoly status was intended to show that WU did not have a statutory monopoly granted pursuant to Section 222. More recently, we reiterated our understanding that Section 222 permitted us to find that public telegraph service was best provided by a single carrier, for we said that the section "* * * was enacted to permit WU * * * to achieve a monopoly position for domestic telegraph operations." The Western Union Telegraph Co., 55 FCC 2d 668, 669 at footnote 2 (1975). We note that the United States Court of Appeals for the Second Circuit, in its opinion in the matter likewise stated that the Section did provide for a grant of monopoly status to WU. See *Western Union International, Inc.* v. *FCC*, 544 F. 2d 87, at 93 (2d Cir. (1976)). (Some other cases which support our basic premise are *Western Union Telegraph Company* v. *United States*, 217 F. 2d 579 (1954) and *Western Union Telegraph Company* v. *United States*, 267 F. 2d 715 (1959).) Thus, we have continued to exercise the discretion granted to us by Section 222 to find that the public interest would be served by a monopoly in domestic public telegraph service.

19. Graphnet is a carrier which was authorized to provide private record communications services. Such a service is characterized by the requirement for prior subscription to the service before use and by the condition that the originator of the message be a subscriber. Under the terms of Graphnet's proposed interconnection with the IRC's, which the instant application was filed to implement, the originator of a message would not necessarily be a Graphnet subscriber and could initiate a message at any overseas public office. The Commission has never authorized Graphnet to participate in any of the PMS markets. *Graphnet Systems, Inc.*, 44 FCC 2d 800 (1974); *Graphnet Systems, Inc.*, 61 FCC 2d 685 (1976). Nor did the Commission open the PMS markets to resale carriers in its *Resale and shared Use* decision, 60 FCC 2d 261 (1976). In the *Resale and shared Use* proceeding the Commission was concerned only with the reselling and sharing of first tier carriers' private line facilities and their use for further offerings by second tier, lessee carriers to the public in the form of private-line type services. In that decision, the commission stated that:

> * * * [T]he second tier will be comprised of carriers and other entities leasing the preponderance of their communications plant from the first tier carriers for the ultimate purpose of reselling these to the public sector—either directly in the form of point-to- point communications channels, or implicitly, when these channels and switching facilities are combined to form a switched *private line* data or voice communications service, or a communications based data processing service. (60 FCC 2d 261, 300 (1976) (emphasis added).)

and at paragraph 107:

> * * * Again, we look to the fact that an applicant will be seeking to enter a market wherein other entities (both resale carriers and to some extent underlying carriers) are providing service in a competitive climate.

60 FCC 2d at 311 (1976). Clearly, the service Graphnet proposes to offer is not within the scope of those considered by the Commission in its *Resale and shared Use* decision. Nor may Graphnet assume any right to entry into the domestic public message telegraph market predicated upon the opinion of the United States Court of Appeals for the District of Columbia Circuit in the *Execunet* case, *MCI Telecommunications Corp.* v. *F.C.C.*, 561 F. 2d 365 (D.C. Cir. 1977), cert denied, No. 77-40, 46 U.S.L.W. 3448 (January 16, 1978). For as discussed above, in 1943 the Commission affirmatively determined, after a hearing, that it would be in the public interest to close the domestic public message telegraph market to competition. The *Execunet* Court held that "[t]here being no affirmative determination of public interest need for restrictions, MCI's facility authorizations are not restricted * * *." Id. In this case, an affirmative determination has been made and Graphnet's Section 214 authorization lawfully restricts it to services other than public message service. Thus our action in designating this application for hearing is consistent with the *Execunet*[8] decision. We have not re-examined the fundamental decision made in 1943 regarding the public interest consequences of competition in the provision of basic public message telegraph service (PMS). Accordingly, while we believe such a re-examination is now clearly called for, we do not at this time have any public interest findings which could serve as a proper basis for overturning our 1943 decision.

II. The Proposed Rule Making

20. Clearly, the factual situation has changed significantly since 1943. New communications technologies and services have been developed, and we have determined that competition can play an important and effective role in bringing the benefits of these developments to the public—particularly in the area of specialized needs and services. We are today instituting a proceeding to re-examine the 1943 grant

[8] In light of this action, we need not rule here on the Section 222(e) arguments of TRT.

of monopoly and will see that such proceeding is expedited. Meanwhile, however, we believe it would be an abuse of our lawful discretion to authorize competitive suppliers of public message telegraph service. Therefore any application pending before this Commission, or filed during the pendency of this proceeding must be set for hearing if the requested facilities are to be used to provide public message services. We anticipate that any such hearing either will be consolidated with or held in abeyance pending completion of the inquiry we institute herein. However, should Graphnet or any other carrier believe that an immediate facility request is of such compelling nature in the public interest as to warrant an ad hoc proceeding, we would consider such a proposal if fully supported by specific documentation of the public interest basis on which the request is made.

21. Assuming that it would be in the public interest to permit competition in all areas of PMS, consideration should be given to the need for additional regulatory standards and procedures required to ensure equal treatment of all carriers under our rules and regulations. Presently, WU is required to adhere to certain regulations [9] that previously have not been imposed on Graphnet because it has no authority to offer any public message services. As WU has observed, in a filing entitled "Contingent Request," the grant of the subject application would authorize Graphnet to offer what traditionally has been categorized as public message service. In the event Graphnet receives an authorization, WU argues that both carriers should be required to adhere to the rules in the same way. Although Graphnet has challenged this conclusion, we find that we must agree with WU, for all of the aspects of Graphnet's proposal fit within the common definition of public message service (see footnote 6 and paragraph 17, supra.). Accordingly, in the proceeding hereby instituted we shall determine what new or existing rules or modifications thereof, are both necessary and sufficient to protect the public interest whether PMS is offered on a sole source or competitive basis.

22. Because we are concerned with the offering of a public as opposed to a private service, the issue of competitive impact must be given consideration. See Specialized Common Carriers, 29 FCC 2d 870 (1971) and Resale and Shared Use, 60 FCC 2d 261 (1976). Both Graphnet and Western Union predict a continuous decline in the volume of inbound international messages, [10] a condition we have not been faced with in other preceedings involving the question of competitive impact. Here we are discussing a market that has been dwindling in volume for nearly five decades and is not characterized by a multiplicity of participant carriers, so that the market may show no great response to competitive offerings. Moreover, we are experiencing an evolution in communications technology and the implementation of these technical innovations may very well result in the extinction of the market.

23. Based upon the application and related comments before us, it appears that the questions requiring resolution in this proceeding may be summarized as follows:

I. Whether there is a public need for public message telegraph service which cannot adequately be satisfied by alternative voice and record services (including public message telephone service, mailgram, postal services, electronic funds transfer, or other forms of electronic message services);

II. Whether the public message telegraph service is or can be made economically viable without either direct or cross-subsidization, and, if not, what should be the magnitude and source of such subsidy, both now and in the future;

III. Considering the information developed in response to the foregoing issues, whether there is any public interest justification for:

i. Requiring as a matter of policy the continued offering of public message telegraph service;

ii. Authorizing as a matter of policy whatever direct or cross-subsidies are required to maintain this service; or

iii. Continuing the role of Western Union as the sole source supplier of domestic public message telegraph service;

IV. If the domestic message telegraph market is opened to competition, whether different regulatory standards and procedures should be established for carriers participating in the handling of domestic PMS and private record services, and, if so, the specific rules and regulations which should be adopted. This should include consideration of:

i. Whether Western Union should be relieved of any of the regulatory requirements now imposed as a result of its offering of PMS service; and

ii. The maximum extent to which the Communications Act of 1934 will permit those markets opened to competition to be deregulated.

Regardless of whether competition is found to be in the public interest, we will examine the need for continuation of the present system of providing domestic public message service. More specifically, we will be reviewing the need for WU to maintain its approximately 5,000 offices and agencies throughout the nation, and the need for modification of present Commission Rules and Standards for closure of or reduction of hours of service at the carrier's public offices and agencies. To the extent the question of free direct access is applicable in this proceeding, the full context and implications of that issue will be resolved in another proceeding, stemming from RCA Global Communications Inc.'s petition for relief (RM 2960) filed August 19, 1977. [11]

24. The foregoing constitute the areas in which we are proposing to prescribe procedures and regulations, if such prescription is found to be necessary or desirable in the public interest. Interested parties may suggest other areas which may assist us in reaching a resolution of this proceeding, and parties so interested are requested to address in their reply comments any of the suggestions so submitted by other parties.

25. *Accordingly, it is ordered,* That pursuant to the provisions of Sections 4(i), 4(j), 214 and 403 of the Communications Act of 1934, as amended, there is hereby instituted an inquiry and proposed rulemaking into the foregoing matters. Members of the public are put on notice that any policies which may be established in this proceeding may be embodied in rules of the Commission.

26. *It is further ordered,* That all interested persons may file comments on the foregoing matters on or before June 1, 1978, and reply comments on or before July 3, 1978. In reaching its decision in this matter, the Commission may also take into account any other relevant information before it, in addition to the comments invited by this Notice. In accordance with the provisions of § 1.419 of the Commission's rules and regulations, an original and 5 copies of all comments, shall be furnished to the Commission. Parties should address themselves to the question of whether oral argument

[9] The applicable Sections are §§ 63.64; 63.66-68; 63.91; 63.502-503; 63.506 and 64.202-298. WU erred in including §§ 63.60-63; 63.90 and 63.505 of the rules, for they are applicable to any common carrier subject to Section 214 of the Act.

[10] Graphnet projections show traffic will decline from a high in 1976 of 6,115,000 to 4,136,000 messages in 1980. While Western Union did not provide any long range projections, we are able to estimate that 1980 traffic would approximate 5,150,000 messages using WU's data as the basis therefor.

[11] In that petition, inter alia, RCA Global requested that:

* * * the Commission "revisit" the so-called "free direct access" decision and associated policies, modify these, and permit hinterland senders and recipients of international message telegrams to access (or be accessed by) RCA Globcom at no additional cost to such senders or recipients in excess of the prevailing tariff rate for international telegram service.

before the Commission *en banc* would assist in a resolution of this matter.

27. *It is further ordered*, That, pursuant to Sections 4(i), 4(j), 214 and 403 of the Communications Act, as amended, a hearing is instituted to investigate whether grant of the above-captioned application is in the public interest, convenience and necessity. This proceeding is to be held in abeyance pending completion of the rule making instituted by paragraph 24, supra, unless Graphnet can make the showing referenced in paragraph 20, supra.

FEDERAL COMMUNICATIONS COMMISSION,[12]
WILLIAM J. TRICARICO,
Secretary.

SEPARATE STATEMENT OF CHAIRMAN CHARLES D. FERRIS

Re: *Regulatory Policies Concerning the Provision of Domestic Public Message Services by Entities Other than the Western Union Telegraph Company* (Memorandum Opinion and Order and Notice of Inquiry and Proposed Rule Making); *Graphnet Systems, Inc., Tariff Revisions* (Transmittal No. 28); *Graphnet Systems, Inc., Tariff Revisions* (Transmittal No. 38).

Graphnet Systems, Inc. is an innovative new "resale" common carrier whose business is to convey hard copy messages for its subscribers over transmission facilities it leases from other carriers. Graphnet specializes in "facsimile" transmissions, in which it "photographs" messages by an electronic scanning process, sends the signals over intercity transmission facilities, and delivers hard copy images of the original messages to facsimile terminals at the destination point.[13] The carrier also offers digital record communications service (a "data" transmission service) on a subscription basis, as a result of modifications to its original authorization to provide only facsimile services.[14]

The three actions to which I address these separate remarks arise from Graphnet's desire to offer a public message telegraph service (PMS) which heretofore has not been a competitive service but has been a monopoly offering of the Western Union Telegraph Co. Graphnet seeks, through its tariff filings and its Section 214 application, to deliver inbound international telegraph messages from the "gateway" points where they enter this country to the addressees in so-called "hinterland" areas not served by the international record carriers.[15] I subscribe to the majority opinions rejecting the tariffs and setting the Section 214 application for hearing; and I add my personal views on the important competition issues that pervade these three actions.

Graphnet, in effect, has asked the Commission to allow it to compete with Western Union in the public telegraph business even though the Commission has not considered, in recent times, whether such competition would serve the public interest and cannot decide that question on the basis of the record that is before it now. In the inquiry and rule making proceeding we initiate today, the Commission will compile a proper record for making important policy decisions regarding competition in the public telegraph business. This approach is consistent with our obligation under the Communications Act to make communications policy knowledgeably after proper consideration of the consequences of alternative policy choices.[16]

The issues and subissues are not easy. On the one hand, the Commission has opened several domestic communications markets to competition in recent years[17] with generally healthy results both for consumers and for the communications industry.[18] Consumers have more choices now, and, therefore, a larger voice in the marketing decisions of the industry. And the industry, for the most part, has responded with innovative service and facility offerings and even rate competition where that has been possible without unlawful cross-subsidies.

Graphnet is one of the new entrants, providing both a service choice to consumers and an innovative spur to the established carriers. I, personally, am committed to continuing and extending our pro-competition policies in all communications markets, including the public message telegraph service market Graphnet seeks to enter, if such policies promise to benefit the public.[19]

On the other hand are the contentions of established carriers—some of them self-serving, but some, perhaps, quite legitimate—that the Commission must be careful not to undermine the basic public communications services such as ordinary telegraph service by allowing "cream-skimming" competition that may not serve the public well in balance. We simply do not know enough now to evaluate the rival claims about the effects competition would have on public message telegraph service. We hope to learn enough in the inquiry we initiate today to update our policy. We do hope somehow to stimulate improvements in this singularly moribund segment of an otherwise healthy common carrier communications industry.

I expect to learn, for example, (1) what alternatives there are to public message telegraph service; (2) whether the alternatives are attractive enough to cause customers to use new services and to induce carriers to offer them; (3) what impact competition would have on Western Union and its ability to serve public telegraph customers; and (4) whether there are strong public policy reasons to preserve telegraph service essentially as it is now, even though it does not earn its keep for Western Union and despite the de-

[12] See attached Separate Statement of Chairman Charles D. Ferris.

[13] *Graphnet Systems, Inc.*, 61 FCC 2d 685 (1976); *Graphnet Systems, Inc.*, 44 FCC 2d 800 (1974).

[14] *Graphnet Systems, Inc.*, 61 FCC 2d 685. Graphnet also has authorization to extend its services to certain overseas points, subject to Commission approval of operating agreements with appropriate foreign entities. *Graphnet Systems, Inc.*, 63 FCC 2d 402 (1977), recon. denied, March 9, 1978.

[15] International record carriers (e.g., ITT World Communications, Inc.) may accept and deliver international messages in this country only in "the cities which constitute gateways approved by the Commission as points of entry into or exit from the continental United States * * *" 47 U.S.C. 222(a)(5). The "hinterland" is everything in this country outside the gateways. See generally, *International Record Carriers' Scope of Operations in the Continental United States*, 38 FCC 2d 543 (1972).

[16] See my separate statement with regard to the *Petition of American Telephone & Telegraph Company for Declaratory Ruling*, FCC 78-142, released February 28, 1978, *review pending sub nom. MCI Telecommunications Corp.* v. *FCC and U.S.*, Nos. 78-1150, 78-1151, 78-1192, D.C. Circuit.

[17] E.g., *Resale and Shared Use of Common Carrier Services and Facilities*, 60 FCC 2d 261 (1976), 62 FCC 2d 588 (1977), *aff'd sub nom. AT&T* v. *FCC*, No. 77-4057, 2d Circuit (decided January 26, 1978); *Interstate and Foreign Message Toll Telephone Service*, 56 FCC 2d 593 (1975), 58 FCC 2d 736 (1976), *aff'd sub nom. North Carolina Utilities Comm.* v. *FCC*, 552 F. 2d 1036 (4th Cir. 1977), cert. denied, 46 U.S.L.Wk. 3219 (October 3, 1977).

[18] Some of the new entrants have not succeeded. To the extent that they simply could not survive in the competitive marketplace, that is no different from business realities in unregulated industries. In fact, we anticipated some failures. E.g., *Specialized Common Carrier Services*, 29 FCC 2d 870, 926 (1971), *aff'd sub nom. Washington Utilities & Transp. Comm.* v. *FCC*, 513 F. 2d 1142 (9th Cir.), cert. denied, 423 U.S. 836 (1975).

[19] The Commission has been diligent in its continuing scrutiny of the competitive markets it has created. It has been alert both to claims of economic injury to the established carriers and their ability to serve the public, *Economic Implications of Customer Interconnection* (First Report), 61 FCC 2d 766 (1976), and to charges that the competitive responses of the established carriers have been unfair, AT&T (Docket No. 19919), 55 FCC 2d 224 (1975), 58 FCC 2d 382 (1976). I expect to maintain that scrutiny, both to ensure that competition is fair and to evaluate its impact on the public.

clining demand for the service.[20] Until I can answer these and other questions, I cannot responsibly and conscientiously make the kind of policy decision Graphnet's application and tariffs require.

Graphnet's argument that the District of Columbia Circuit's decision in the *Execunet* case[21] requires us to allow its tariffs to become effective is superficially appealing. Graphnet, like MCI, is trying here to expand its service offerings by biling new tariffs. But the distinctions between Graphnet's proposal to offer public message telegraph service and MCI's offering of Execunet are far more significant than the similarities, and, in fact, got to the heart of the Court's rationale in *Execunet.*

First, unlike MCI, Graphnet had explicit service limitations written into all the orders granting its Section 214 applications.[22] The Execunet Court found that this was the "usual way" for the Commission to restrict carrier services, pointing out that "a carrier can usually tell if it is subject to service restrictions simply by examining the instruments of authorization issued to it by the Commission."[23] The Court found it significant that not all of MCI's grants were explicitly limited, and it found that the Commission's "novel" reliance on implicit limitations imposed in a broad policy proceeding had "led to error in this case.[24]

While I do not agree that the FCC erred in the *Execunet* case, we plainly do not rely upon implicit limitations here, but upon explicit service restrictions of which Graphnet was fully aware. If Graphnet was dissatisfied with the authorizations as restricted, it need not have accepted them, but could have demanded a hearing that might have led to unrestricted authorizations.[25] Graphnet is getting that hearing now, in the broad inquiry into the future of public message telegraph service we have instituted today.

Second, Graphnet as a "resale" carrier did not construct new "lines" to provide its authorized services and thus did not make a substantial investment in radio or wire facilities in reliance upon its Section 214 certificates.[26] It merely leases circuits from existing carriers and, presumably, leases only enough circuits to provide its authorized services. The Court in *Execunet* appeared to rely strongly upon the fact that MCI had erected facilities that the Commission had found would not "needlessly duplicate" the facilities of established carriers, and held that the use of those facilities for non-private line services would not convert the facilities into needlessly duplicative ones.[27] The Court's reasoning in that case simply has no applications to Graphnet's lease of the facilities of other carriers, which Graphnet could not have obtained but for the restrictions on their use.[28]

The most critical distinction, however, between this case and *Execunet* is the fact that Western Union's public message telegraph service monopoly rest on public interest findings by this Commission, in exercise of specially drafted congressional authorization. Congress in 1943 adopted section 222 of the Communications Act, at a time when the domestic telegraph industry was severely depressed, authorizing the Commission to approve a merger that would create a telegraph monopoly.[29]

On application by Western Union and Postal Telegraph, Inc., the only two telegraph carriers in the country, the Commission approved the merger and found that the resulting monopoly would serve the public interest. *Application for Merger of Western Union and Postal Telegraph, Inc.*, 10 FCC 148 (1943).[30] This finding, which the Commission never has reversed, surely satisfies the *Execunet* requirement that any service restriction rest on an affirmative finding that the public interest requires monopoly provision of the particular services.[31]

---

[20] In the past, we have permitted Western Union to earn high returns on some services so as to subsidize telegraph service. See *Western Union Telegraph Co.*, 49 FCC 2d 532, 550-51 (1974). By separate order today, we have initiated an investigation into newly filed rates for Western Union's Telex and TWX services to determine, on a current record, the extent of subsidization of telegraph and whether such subsidization is justified. *Western Union Telegraph Co.* (Transmittal N. 7346), adopted March 9, 1978. Compare *Western Union Telegraph Co.*, 59 FCC 2d 1508, 1509-11 (1976) (dissenting statement of Commissioner Hooks).

[21] *MCI Telecommunications Corp.* v. *FCC*, 561 F. 2d 365 (D.C. Cir. 1977), cert. denied, 46 U.S.L. Wk. 3448 (January 16, 1978) (hereafter "Execunet").

[22] See Graphnet Systems, Inc., 44 FCC 2d 800; Graphnet Systems, Inc., 61 FCC 2d 685.

[23] Execunet, 561 F. 2d at 373.

[24] 561 F. 2d at 374. Graphnet's certificates do not derive their validity from Specialized Common Carrier Services, supra n. 6, the broad policy proceeding to which the Court referred in *Execunet.* They were granted independently in ad hoc poroceedings in which the Commission found that the public convenience and necessity required certification for limited services. 61 FCC 2d at 687 and n. 9. See also Packet Communications, Inc., 43 FCC 2d 922 (1973), where the Commission, in an ad hoc certification proceeding, first stated its "liberal policy" of authorizing specialized resale carriers to provide limited classes of service. The Commission later adopted a broad policy requiring the established carriers to permit "resale" of the use of their facilities by such carriers as Graphnet. See Resale and Shared Use of Common Carrier Services and Facilities, supra n. 5. The Resale and Shared Use decision, in effect, ratified the ad hoc authorization the FCC already had given Graphnet and several other resale carriers.

[25] See *Capital Telephone Co.* v. *FCC*, 498 F. 2d 734 (D.C. Cir. 1974); *cf. Rome Ry. & Light Co.* v. *Floyd County*, 243 U.S. 257 (1917); *American Bond & Mortgage Co.* v. *U.S.*, 52 F. 2d 318 (7th Cir. 1931); *Universal Wireless* v. *Federal Radio Commission*, 41 F. 2d 113 (D.C. Cir. 1930).

[26] Graphnet may well have devoted substantial capital to computer hardware and software, terminal equipment, and the costs of starting and operating its business. I merely point out that it has not invested in microwave radio facilities or cables of its own for which it obtained construction permits that arguably would be subject to the same freedom from restrictions on use that the Court found in *Execunet.*

[27] 561 F. 2d at 375-76: [T]he public need that justified construction of [MCI's] facilities will still be met [if MCI provides Execunet service] and there is no sense in which those facilities will have become needlessly duplicative. The *Execunet* Court also carefully limited its holding to MCI's existing facilities. 561 F. 2d at 367. Graphnet almost certainly would have to lease additional facilities to add the new services it proposes, so that the Execunet rule as to existing facilities would be inapplicable in any event.

[28] See Resale and Shared Use of Common Carrier Services and Facilities, 60 FCC 2d at 278-79. See also 47 FCC 2d 644, 650 and n.13 (Notice of Inquiry and Notice of Proposed Rulemaking in the Resale proceeding).

[29] See H.R. Rep. No. 69, Consolidations and Mergers of Domestic Telegraph Carriers, 78th Cong., 1st Sess. (1943); S. Rep. No. 13, Consolidations and Mergers of Domestic Telegraph Carriers, 78th Cong., 1st Sess. (1943). In Senate floor debate on the legislation, the sponsor of the bill stated: I believe it is incumbent upon me to state that the objective of those in charge of the proposed legislation was to legislate with the purpose of achieving a merger * * * We confidently expect the carriers to get together quickly—in the public interest, and in their own interest. There can be no valid reason, with the enactment of such legislation, why there should not be a quick merger in the telegraph industry, and I am sure that the Federal Communications Commission will exercise every facility and precaution to see to it that merger is consummated without delay. 89 Cong. Rec. 1095, Feb. 18, 1943 (remarks of Sen. McFarland).

[30] The Second Circuit Court of Appeals only recently recognized Western Union's continuing monopoly in the domestic telegraph market, reversing a Commission decision that would have allowed the company to enter the international communications market with its Mailgram service. The Court held that exclusion from international service was "the price paid by the company for the acquisition of a domestic monopoly over telegraph service." *Western Union International, Inc.* v. *FCC*, 544 F. 2d 87, 93 (2d Cir. 1976), cert. denied, 46 U.S.L. Wk. 3257 (October 18, 1977). See also, *RCA Global Communications, Inc.* v. *FCC*, 559 F. 2d 881, 884, 888 (2d Cir.), reh. granted in part, 563 F. 2d 1 (1977).

[31] 561 F. 2d at 377-80.

There are obvious differences also between AT&T, the monopoly carrier in *Execunet*, and Western Union, the monopoly public message telegraph carrier. AT&T is the world's largest corporation, unquestionably prosperous, and enjoying ever growing revenues and earnings. Western Union has not made its allowed over-all rate of return in many years, and its public telegraph service has long been a money loser.

I confess that I do not know now whether these differences in economic strength have any bearing at all on the extent of competition we should allow in MTS and WATS on the one hand and in telegraph service on the other. Our primary concern is not how carriers fare, but how our actions affect the service the public receives. *Execunet*, 561 F. 2d at 380 and n. 7. Competition that might not diminish AT&T's over-all revenues in any way might still disserve the public interest if the rate structure for public services were upset in a way that caused ordinary telephone users to pay more for vital services. Competition that might severely hurt Western Union's earnings might still serve the public interest if the result were better service and lower rates for most consumers.

But the economic health of the carriers and service to the public are not always and necessarily unrelated.[32] If we should determine in our inquiry that Western Union really cannot maintain its present public telegraph service levels in the face of competition, the serious policy question we would face is whether competition would serve the public convenience and necessity even though public telegraph service as we know it today might be threatened.

Despite our 1943 decision, of course, Western Union has no indefeasible right to its current telegraph service monopoly.[33] Just as the Commission had authority under section 222 to bless the merger that created the monopoly, so we have the responsibility under section 214 to authorize competitors to enter the market if the "public convenience and necessity" so require. We will find out what the public convenience and necessity now require in the inquiry we have initiated today.

Difficult questions like those raised by Graphnet test our ability and our will to reconcile the *Execunet* decision with our plain statutory responsibility to weigh the consequences before we take significant regulatory actions. I believe we are succeeding. I cannot conceive of this agency opening the public telegraph market to Graphnet or any other potential entrant without seriously considering the costs and benefits to the public. I can conceive of our opening this market and many others to competition after we have compiled a record that enables us to warrant that the public will benefit.[34] I do not believe the *Execunet* decision requires us, or even permits us, to avoid making these important policy decisions responsibly and conscientiously, on the basis of an adequate record.

[FR Doc. 78-8808 Field 4-3-78; 8:45 am]

[32] See, e.g., *Carroll Broadcasting Co.* v. *FCC*, 258 F. 2d 440 (D.C. Cir. 1958).

[33] See *Press Wireless, Inc.*, 21 FCC 311, 317 (1956).

[34] *FCC* v. *RCA Communications, Inc.*, 346 U.S. 86, 97 (1951).

[6712-01]

[47 CFR Part 64]

[Docket No. 19308]

PROVIDING FOR A NEW PRIORITY SYSTEM FOR THE RESTORATION OF COMMON CARRIER-PROVIDED INTERCITY PRIVATE LINE SERVICES

Order Extending Time for Filing Comments and Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: Action taken herein extends the time for filing comments and reply comments in a rulemaking proceeding concerning the amendment of Part 64 of the Commission's rules to provide for a new priority system for the restoration of common carrier provided intercity private line services. Petitioner, D. R. Wofford, Chairman of the Industrial Communications Services Subcommittee, National Industry Advisory Committee, among other petitioners, states that the additional time is needed so that the industrial users affected will have time to submit proper comments subsequent to consideration of the proposed changes by the Subcommittee at its meeting on March 15, 1978.

DATES: Comments must be received on or before May 23, 1978. Reply comments must be received on or before June 14, 1978.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Herbert J. Neumann, Emergency Communications Division, 202-632-7232.

SUPPLEMENTARY INFORMATION: In the matter of amendment of Part 64 of the Commission's rules to provide for a new priority system for the restoration of common carrier-provided intercity private line services, Docket No. 19308 (see 43 FR 7672).

Adopted: March 24, 1978.

Released: March 28, 1978.

1. The further notice of proposed rulemaking (Docket 19308) to amend Part 64, Subpart D, Appendix A of the rules, adopted on February 8, 1978, specifies that comments may be filed on or before March 24, 1978.

2. The Commission has recieved motions for extension of time based on substantive issues provided in comments filed. 3. Noting the need to consider all pertinent views represented, the Commission will grant a time extension. Since substantive issues have been raised, additional time will also be allowed for reply comments. 4. Accordingly, good cause having been shown, *It is ordered*, Pursuant to delegated authority contained in § 0.303(c) of our rules (47 CFR 0.303(c)), that the time to file comments in this proceeding is extended until May 23, 1978, and the time to file reply comments is extended until June 14, 1978.

WALTER R. HINCHMAN,
Chief, Common Carrier Bureau.

[FR Doc. 78-8807 Filed 4-3-78; 8:45 am]

[6712-01]

[47 CFR Part 73]

[BC Docket No. 78-115; RM-2992]

FM BROADCAST STATION IN GRAND ISLAND, NEBR.

Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rule making.

SUMMARY: Action taken herein proposes the assignment of a third FM channel to Grand Island, Nebr. Petitioner, KMMJ, Inc., states the proposed station would provide an additional voice to a growing community.

DATES: Comments must be received on or before May 26, 1978. Reply comments must be received on or before June 15, 1978.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Mildred B. Nesterak, Broadcast Bureau, 202-632-7792.

SUPPLEMENTARY INFORMATION: In the matter of amendment of § 73.202(b), table of assignments, FM broadcast stations. (Grand Island, Nebr.), BC Docket No. 78-115, RM-2992.

Adopted: March 27, 1978.

Released: April 3, 1978.

1. The Commission has before it a petition[1] filed by KMMJ, Inc. ("petitioner"), licensee of daytime-only AM station KMMJ, Grand Island, Nebr., proposing the assignment of channel 299 as a third FM assignment to Grand Island. The channel could be assigned to Grand Island in conformity with the minimum distance separation requirements. An opposition was filed by Grand Island Broadcasting Co., Ltd. ("KRGI"), licensee of AM station KRGI and KRGI-FM (channel 243), Grand Island.

2. Grand Island (population 31,269), in Hall County (population 42,851,[2] is located approximately 97 kilometers (60 miles) west of Lincoln, Nebr. It is served locally by two FM stations (both class C): KRGI-FM (channel 243) and KROA (channel 239); one full-time AM station (KRGI) and one AM daytine-only station (KMMJ), licensed to petitioner

3. Petitioner states that there has been a 21.5 percent increase in the population of Grand Island and a 19.8 percent increase in the population of Hall County between 1960 and 1970. It adds that, according to the Nebraska Department of Economic Development, the 1975 estimated population of Grand Island was 35,594, and the Nebraska Office of Planning and Programming has projected that the 1980 population of Grand Island would be 37,950. Petitioner asserts that Grand Island is the principal community in a fast growing retail trading zone, which the 1977 Editor and Publisher Market Guide estimates at 104,400 persons. Petitioner claims that the large rural audience which exists beyond Grand Island would welcome an additional voice, especially an FM station operating full-time. It contends that the economic base of the area is strong enough to support an additional station.

4. In opposition, KRGI states that exceptions are made to the population criteria under which Grand Island would receive one or two FM channels, only in those instances where a convincing showing of special circumstances is made. It contends that, although petitioner claims the proposal would not cause any prohibitive preclusion, the lack of preclusion alone would not justify an exception to the population criteria. KRGI asserts that, even though petitioner submitted certain data indicating population growth in the area, it made no express claims that the data represents a unique set of circumstances.

5. In reply comments, petitioner states that the important factor in this proposal is that Grand Island and Hall County are the heart of one of the fastest growing areas in the State of Nebraska, one which is expected to continue to grow. It points out that KRGI does not argue that the economic base of the area is inadequate, rather KRGI has elevated Commission population guidelines to rule status. Petitioner argues that, while population criteria is a consideration in the assignment of channels, it is not necessarily an overriding one. It asserts that it has submitted demographic and statistical information supporting the need for an additional service and it would be contrary to the public interest not to make the proposed assignment. It further claims that it is not clear that Grand Island already has two FM stations since Station KROA (channel 239) is a noncommercial, principally religious, station which does not sell any commercial time. Finally, petitioner contends that KRGI's interest in this proceeding is to prevent the inauguration of competition for its FM station in Grand Island.

6. Preclusion studies: Channels 296A, 298, 299, and 300 would be precluded from use in various areas as a result of the proposed assignment. Twenty communities of over 2,500 population are located in these precluded areas. Six of these are without an FM channel (Nebraska: Minden, population 6,669; Cozad, 4,219; Central City, 2,803; Kansas: Norton, 3,627; Smith Center, 2,989; Plainville, 2,627). Cozad and Norton have daytime-only AM stations. The remaining four communities are without local aural broadcast service. Petitioner should indicate whether there are any other channels available for assignment to the six communities in the precluded areas.

7. Additional considerations: Petitioner's *Roanoke Rapids-Anamosa* showing, assuming proposed facilities of 100 kilowatts and 135 meters (450 feet) HAAT, indicates that first FM service and second nighttime aural service would be provided to 38 persons in a 13 square kilometer (5 square miles) area and a second FM service would be provided to 985 persons in a 230 square kilometer (88 square miles) area. No first nighttime aural service would be provided.

8. The request for a third FM assignment to a community of 31,269 persons exceeds the FM population guidelines. Although the proposed assignment would preclude a few communities on four channels, other channels may be available to assign. Also, petitioner's showing indicates that some first FM and second nighttime aural service would be provided. The notice will be issued to examine the merits of a proposal to assign a third FM channel to what appears to be a fast growing community even though this would exceed the normal assignment quota.

9. In light of the foregoing, the Commission proposes to amend the FM table of assignments, § 73.202(b) of the Commission's rules, with regard to Grand Island, Nebr., as follows:

City and Channel No.

Grand Island, Nebr., Present—239, 243; Proposed—239, 243, 299.

10. The Commission's authority to institute rule making proceedings; showings required; cut-off procedures; and filing requirements.

NOTE.—A showing of continuing interest is required by paragraph 2 of the attached appendix before a channel will be assigned.

11. Interested parties may file comments on or before May 26, 1978, and reply comments on or before June 15, 1978.

FEDERAL COMMUNICATIONS COMMISSION,
WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc. 78-8828 Filed 4-3-78; 8:45 am]

[1] Public notice of the petition was given on November 14, 1977, Report No. 1089.

[2] Population figures are taken from the 1970 U.S. Census, unless otherwise indicated.

notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

[3410-11]

DEPARTMENT OF AGRICULTURE

Forest Service

MT. HOOD MEADOWS SKI AREA

Availability of Final Environmental Statement

Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, has prepared a Final Environmental Statement for the Future Development for Mt. Hood Meadows Ski Area, USDA-FS-R6-FES(Adm)-77-11.

The Environmental Statement concerns a proposed expansion of facilities at an existing ski area. The proposed plan was formulated from a combination of the alternatives which were presented in the draft statement and allows for additional facilities which will about double the skier at one time capacity of the area. The Mt. Hood Meadows ski area, under the proposed plan, would be able to eventually serve about 8,000 skiers at one time.

The Final Environmental Statement was transmitted to EPA on March 28, 1978.

Copies are available for inspection during regular working hours at the following locations:

Mt. Hood National Forest, Supervisors Office, 2440 S.E. 195th, Portland, Oreg. 97233.

Mt. Hood National Forest, Hood River Ranger District, Mt. Hood-Parkdale, Oreg. 97041.

Mt. Hood National Forest, Zigzag Ranger District, Zigzag, Oreg. 97073.

USDA, Forest Service, South Agriculture Building, Room 3210, 12th St. & Independence Avenue SW, Washington, D.C. 20250.

USDA, Forest Service, Pacific Northwest Region, 319 S.W. Pine Street, Portland, Oreg. 97204.

A limited number of single copies are available upon request to F. Dale Robertson, Forest Supervisor, Mt. Hood National Forest, 2440 S.E. 195th, Portland, Oreg. 97233. Copies have also been placed in local libraries.

Copies of the Environmental Statement have been sent to various Federal, State, and local agencies as outlined in the CEQ guidelines.

Dated: March 28, 1978.

WILLIAM E. MORDEN,
Acting Forest Supervisor.

[FR Doc. 78-8791 Filed 4-3-78; 8:45 am]

[3410-11]

WILLIAMS FORK LAND MANAGEMENT PLAN ARAPAHO NATIONAL FOREST

Availability of Draft Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, has prepared a draft environmental statement for the Williams Fork Land Management Plan (Arapaho National Forest). The Forest Service report number is USDA-FS-R2-DES(Adm) fiscal year 78-02.

The environmental statement concerns a proposal to implement a revised Land Management Plan for the Williams Fork Unit, located in Grand and Summit Counties, Colo.

This draft environmental statement was transmitted to E.P.A. on March 28, 1978.

Copies are available for inspection during regular working hours at the following locations:

USDA, Forest Service, So. Agriculture Bldg., Room 3230, 12th St. & Independence Avenue SW., Washington, D.C. 20250.

USDA, Forest Service, White River National Forest, P.O. Box 948, Glenwood Springs, Colo.81601.

USDA, Forest Service, 11177 West 8th Avenue, P.O. Box 25127, Denver, Colo. 80225.

USDA, Forest Service, Routt National Forest, P.O. Box 1198, Steamboat Springs, Colo. 80477

A limited number of single copies are available upon request to Craig W. Rupp, Regional Forester, USDA Forest Service, 11177 West 8th Avenue, Lakewood, Colo. 80225.

Copies of the environmental statement have been sent to various Federal, State, and local agencies as outlined in the CEQ Guidelines.

Comments are invited from the public, and from State and local agencies which are authorized to develop and enforce environmental standards, and from Federal agencies having jurisdiction by law or special expertise with respect to any environmental impact involved for which comments have not been requested specifically.

Comments concerning the proposed action and requests for additional information should be addressed to Craig W. Rupp, Regional Forester, USDA Forest Service, 11177 West 8th Avenue, Lakewood, Colo. 80225. Comments must be received by May 30, 1978, in order to be considered in the preparation of the final environmental statement.

Dated: March 28, 1978.

J. MERLE PRINCE,
Forest Supervisor.

[FR Doc. 78-8790 Filed 4-3-78; 8:45 am]

[6320-01]

CIVIL AERONAUTICS BOARD

[Docket 32087; Order 78-3-141]

BRITISH AIRWAYS BOARD

Application for Amendment of its Foreign Air Carrier Permit; Statement of Tentative Findings and Conclusions and Order To Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 30th day of March 1978.

By application filed February 7, 1978, British Airways Board (British Airways) requests amendment of its foreign air carrier permit[1] to include authority under the Air Services Agreement (Bermuda 2) between the Governments of the United States and the United Kingdom effective July 23, 1977. In support of the requested permit amendment, British Airways states that it is a public corporation of the United Kingdom, existing pursuant to the British Airways Board Act of 1977; that it is a citizen of the United Kingdom; that there has been no change in the ownership and control of the airline from that found in Orders 74-3-4 and 74-4-17; that it is subject to the regulatory jurisdiction of the United Kingdom Civil Aviation Authority; that it has been designated by the United Kingdom authorities to serve San Francisco and Seattle, among other U.S. points, in the foreign air transportation of persons, property, and mail over various routes to and from the United Kingdom;[2] and that it continues to be fit, willing, and able to perform the foreign air transportation which it is authorized to operate. Finally, British Airways argues that its proposed amendment would

[1] Issued by Order 74-4-17, March 19, 1974.

[2] We will cancel the carrier's separate temporary permit for certain Alaskan services, issued by Order 75-3-68 dated March 19, 1975, when the specimen permit becomes effective. Since the attached specimen permit includes all of the previously granted Alaskan authority, we find that there is no need for the continued effectiveness of the earlier Alaskan permit.

bring its route segments into conformity with the provisions of the Bermuda 2 Agreement, and allow British Airways to exercise the ancillary rights set forth in Section 5 of Annex I.

British Airways also seeks a waiver from the requirments of Part 312 of the Board's Economic Regulations because the requested route authorities are provided for in a duly executed Air Services Agreement of the United States and that the net environmental impact of the proposed amendments is de minimis.[3]

Our proposed action will amend the carrier's permit by making additions, deletions, and realignments of its authority pursuant to the carrier's designation under Bermuda 2. In brief, the principal additions include new coterminal authority at Seattle, substantially improved authority at Los Angeles, Miami and San Francisco, and new beyond authority to Mexico City. At the same time, British Airways' authority to serve Bermuda and the Bahama Islands from U.S. points is being deleted, as is most of the carrier's beyond authority to Caribbean, Pacific and South American points.[4]

In view of the foregoing and all the facts of record, the Board tentatively finds and concludes that:

(a) British Airways Board is substantially owned and effectively controlled by the Government of the United Kingdom;

(b) It is in the public interest to amend the foreign air carrier permit issued to British Airways Board to conform to the provisions of Bermuda 2;

(c) The public interest requires that the exercise of the privileges granted by the amended permit shall be subject to the terms, conditions, and limitations contained in the specimen permit attached to this order, and to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board;

(d) British Airways Board is fit, willing, and able properly to perform the transportation described in the specimen permit, and to conform to the provisions of the Federal Aviation Act of 1958, as amended, and the rules, regulations, and requirements of the Board thereunder;

(e) The public interest does not require an oral hearing on the application;

(f) The amendment of British Airways Board's foreign air carrier permit would not constitute a "major federal action significantly affecting the quality of the human environment" within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA) and will not constitute a "major regulatory action" under the Energy Policy and Conservation Act of 1975 (EPACA), as defined in section 313.4(a)(1) of the Board's Regulations;[5] and

(g) Except to the extent granted, the application of British Airways Board in this proceeding should be denied.

It is therefore ordered that: 1. All interested persons are directed to show cause why the Board should not (1) make final its tentative findings and conclusions stated here, (2) issue an amended foreign air carrier permit to British Airways Board in the specimen form attached, and (3) cancel the temporary foreign air carrier permit issued by Order 75-3-68, effective upon the effective date of the foreign air carrier permit here proposed to be issued;

2. Any interested person having objection to the issuance of an order making final the Board's tentative findings and conclusions, issuing the proposed amended foreign air carrier permit, and cancelling the permit issued to British Airways Board by Order 75-3-68, shall file with the Board and serve on the persons named in paragraph 5 a statement of objections within 21 days after the date of service of this order. This statement shall specifically identify the objectionable findings and conclusions, and shall include a summary of the testimony, statistical data, and concrete evidence to be relied upon in support of the objections. If an oral hearing is requested, the objector should state in detail why such hearing is considered necessary and what relevant and material facts he would expect to establish through such hearing which cannot be established in written pleadings;

3. If timely and properly supported objections are filed, full consideration will be accorded the matters and issues raised by the objections before further action is taken by the Board; *Provided,* That the Board may proceed to enter an order in accordance with its findings and conclusions set forth in this order if it is determined that there are no factual issues present that warrant the holding of an oral hearing;[6]

4. In the event no objections are filed, all further procedural steps will be deemed to have been waived and the Secretary shall enter an order which (1) shall make final the Board's tentative findings and conclusions set forth in this order, and (2) subject to the approval of the President, shall issue a foreign air carrier permit to the applicant in the specimen form attached; and

5. This order shall be served upon British Airways Board, the Ambassador of the Government of the United Kingdom of Great Britain and Northern Ireland, The Department of State, and the Department of Transportation.

This order shall be published in the FEDERAL REGISTER and transmitted to the President.

By the Civil Aeronautics Board:[7]

PHYLLIS T. KAYLOR,
Secretary.

SPECIMEN PERMIT

PERMIT TO FOREIGN AIR CARRIER

(as amended)

British Airways Board is hereby authorized, subject to the provisions hereinafter set forth, the provisions of the Federal Aviation Act of 1958, and the orders, rules and regulations issued thereunder, to engage in foreign air transportation with respect to persons, property, and mail, as follows:

1. Between the coterminal points London and Manchester, England and Prestwick/Glasgow, Scotland, and

(a) the coterminal points Boston, Mass., Chicago, Ill., Detroit, Mich., Los Angeles, Calif., Miami, Fla., New York, N.Y., Philadelphia, Pa., San Francisco, Calif., Seattle, Wash., Washington, D.C./Baltimore, Md., and

(b) intermediate points in Canada and the coterminal points Boston, Mass., Chicago, Ill., Detroit, Mich., New York, N.Y., Philadelphia, Pa., Washington, D.C./Baltimore, Md., and

(c) the intermediate points Boston, Mass., Detroit, Mich., New York, N.Y., Philadelphia, Pa., and Washington, D.C./Baltimore, Md., and the terminal point Mexico City, Mexico, and

(d) intermediate points in Canada and the coterminal and intermediate points Boston, Mass., Chicago, Ill., Detroit, Mich., Los Angeles, Calif., New York, N.Y., and Washington, D.C./Baltimore, Md., and beyond the intermediate points to terminal points in Panama, and

(e) the intermediate point Miami, Fla., and the terminal point Mexico City, Mexico; and

2. Between the terminal point London, England, the intermediate point Anchorage, Alaska, and coterminal points in Japan.

The holder shall be authorized to engage in charter trips in foreign air transportation subject to the terms, conditions, and limitations prescribed by part 212 of the Board's Economic Regulations.

The holder is authorized to operate services and carry traffic (including "blind

[3] Considering the limited amendment proposed to be granted by this order, we will grant the carrier's requested waiver from the requirements of Part 312 of the Board's Economic Regulations.

[4] Importantly, the United Kingdom retains the authority to designate a flag carrier for Bermuda-U.S. services under United Kingdom Route 8 and for additional Caribbean, Pacific, and South American services.

[5] Our tentative findings are based upon the fact that amendment of British Airways' permit will not result in (1) a significant increase in civil aviation operations at U.S. points and (2) the annual consumption of 10 million gallons of fuel.

[6] Since provision is made for the filing of objections to this order, petitions for reconsideration will not be entertained.

[7] All Members concurred.

sector traffic", as defined in part 216 of the Board's Economic Regulations) as provided for in section 5 of annex 1 to the Air Services Agreement between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland, effective July 23, 1977.

This permit shall be subject to the condition that all-cargo aircraft may not be operated in scheduled air transportation on segments 1 (a), (b), and (c), and 2 above, and that combination aircraft may not be operated in scheduled air transportation on segments 1 (d) and (e).

This permit shall be subject to the condition that no local traffic may be carried between Los Angeles and Canada and Los Angeles and Panama on segment 1(d).

The holder shall conform to the airworthiness and airman competency requirements prescribed by the Government of the United Kingdom of Great Britain and Northern Irleand for British international air service.

The initial tariff filed by the holder shall not set forth rates, fares, and charges lower than those that may be in effect for any U.S. air carrier in the same foreign air transportation; *However,* This limitation shall not apply to a tariff filed after the initial tariff regardless of whether this subsequent tariff is effective before or after the introduction of the authorized service.

By accepting this permit the holder waives any right it may possess to assert any defense of sovereign immunity from suit in any action or proceeding instituted against the holder in any court or other tribunal in the United States (or its territories or possessions) based upon any claim arising out of operations by the holder under this permit.

This permit shall become effective on ———— 1978. Unless otherwise terminated at an earlier date pursuant to the terms of any applicable treaty, convention, or agreement, this permit shall terminate (1) upon the effective date of any treaty, convention, or agreement or amendment thereto, which shall have the effect of eliminating the route or routes authorized by this permit from the routes which may be operated by airlines designated by the Government of the United Kingdom of Great Britain and Northern Ireland (or in the event of the elimination of any part of the authorized route, the authority granted shall terminate to the extent of such elimination), or, (2) upon the effective date of any permit granted by the Board to any other carrier designated by the Government of the United Kingdom of Great Britain and Northern Ireland in lieu of the holder thereof, or (3) upon the termination or expiration of the Air Services Agreement between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland effective July 23, 1977, (Bermuda 2): *Provided, However,* that clause (3) of this paragraph shall not apply if, prior to the occurrence of the event specified in clause (3), the operation of the foreign air transportation herein authorized becomes the subject of any treaty, convention, or agreement to which the United States of America and the United Kingdom of Great Britain and Northern Ireland are or shall become parties.

The Civil Aeronautics Board has directed its Secretary to execute this permit and affix the seal of the Board on————.

[seal]

————
Secretary.

Issuance of this permit to the holder approved by the President of the United States on———— in————

[FR Doc. 78-8812 Filed 4-3-78; 8:45 am]

[6320-01]

[Docket 30658; Orders 78-3-142]

LINEA AEREA NACIONAL-CHILE (LAN)

Application for Amendment of a Foreign Air Carrier Permit; Statement of Tentative Findings and Conclusions and Order To Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 30th day of March 1978.

Linea Aerea Nacional-Chile (LAN) is the holder of a foreign air carrier permit[1] authorizing: (a) foreign air transportation of persons, property, and mail between a point or points in Chile, the intermediate points Lima, Peru; Guayaquil, Ecuador; Cali, Colombia; and Panama City, Panama; and the coterminal points Miami, Fla., and New York, N.Y., and (b) the performance of charter trips in foreign air transportation pursuant to part 212 of the Board's Economic Regulations.

By application filed on March 23, 1977, LAN filed for amendment of its foreign air carrier permit so as to authorize foreign air transportation of persons, property, and mail to Frankfurt, Federal Republic of Germany, as a point beyond the coterminal points Miami and New York. On April 14, 1977, National Airlines, Inc., filed a petition for leave to intervene in any proceeding to consider LAN's application. On May 19, 1977, and February 9, 1978, the carrier amended its application by deleting its request for passenger authority.[2] At the time of filing its latest amendment, LAN also filed a motion to have its application handled by show cause procedures.[3] No answer to LAN's motion have been received.[4]

In granting LAN a route to the United States, the Board found that the carrier met the fitness standards of the Act[5] and that its services were in the public interest. It currently serves the Chile-United States market with six weekly round-trip combination frequencies utilizing B-707 equipment, and three weekly round-trip all-cargo frequencies utilizing B-707F equipment. At the present time, LAN's foreign air carrier permit does not authorize the carrier to provide service to points beyond the United States. However, service by a Chilean carrier beyond Miami and New York to Frankfurt is provided for in the United States-Chile Air Transport Services Agreement,[6] and LAN has been designated by the Government of Chile for the authority the applicant seeks.[7]

In view of the foregoing and all the facts of record, the Board tentatively finds:

1. That it is in the public interest to amend the foreign air carrier permit held by Linea Aerea Nacional-Chile (LAN) so as to authorize the carrier to engage in foreign air transportation of property and mail only to Frankfurt, Federal Republic of Germany as a point beyond the coterminal points Miami, Fla., and New York, N.Y.;

2. That the public interest requires that the exercise of the privileges granted by said amended permit shall be subject to the terms, conditions, and limitations contained in the specimen form of permit attached to this order, and to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board;

3. That Linea Aeras Nacional-Chile (LAN) is fit, willing, and able properly to perform the foreign air transportation proposed to be authorized; and to conform to the provisions of the Act and the rules, regulations, and requirements of the Board;

4. That the Linea Aerea Nacional-Chile (LAN) application presents no questions of fact or law that will require an oral hearing;

5. That except to the extent granted, the application of Linea Aerea Nacional-Chile (LAN) in Docket 30658 should be denied; and

6. That the amendment of the Linea Aerea Nacional-Chile (LAN) foreign

[1] Order 69-5-85, approved May 19, 1969.

[2] Thus, the applicant's amended request for authority beyond the United States to Frankfurt is limited to the carriage of property and mail only. Copies of the amended application have been transmitted to the President pursuant to section 801 of the Act.

[3] LAN's motion is granted.

[4] Since the rules provide for intervention only in evidentiary hearing cases (§ 302.15(a)), we have deferred National's petition to intervene.

[5] In the most recent order amending LAN's foreign air carrier permit, the Board found that the carrier met the fitness standards of the Act, and that LAN's services would be in the public interest. Order 69-5-85, approved May 19, 1969. The present application continues to support these findings.

[6] Specifically, Annex B of that Agreement provides for the following route for a Chilean carrier: "From Chile to Miami and/or New York and beyond the United States of America."

[7] The diplomatic note dated Mar. 7, 1977, designates LAN for property and mail only service to Frankfurt.

air carrier permit is not a "major federal action significantly affecting the quality of the human environment" within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969, and will not constitute a "major regulatory action" under the Energy Policy and Conservation Act of 1975 (EPACA), as defined in section 313.4(a)(1) of the Board's regulations.[8]

It is therefore ordered, That: 1. All interested persons are directed to show cause why the Board should not issue an order making final the tentative findings and conclusions stated here, and why an amended foreign air carrier permit substantially in the form attached to this order should not, subject to the approval of the President pursuant to section 801 of the Act, be issed to Linea Aerea Nacional-Chile (LAN);

2. Any interested person having objection to the issuance of an order making final the Board's tentative findings and conclusions and issueing the amended foreign air carrier permit shall file a statement of objections supported by evidence within 21 days after the adoption of this order. If an oral hearing is requested, the objector should state in detail why such hearing is considered necessary and what relevant and material facts would be expected to be established through such hearing which cannot be established in written pleadings;

3. If timely and properly supported objections are filed, further consideration will be accorded the matters and issues raised by the objections before further action is taken by the Board;[9]

4. In the event no objections are filed, all further procedural steps will be deemed to have been waived, and the Secretary shall entered an order making final the Board's tentative findings and conclusions set forth in this order and, subject to the approval of the President, issuing a foreign air carrier permit to Linea Aerea Nacional-Chile (LAN) in the specimen form attached;

5. The petition to intervene of National Airlines, Inc., is deferred; and

6. Copies of this order shall be served upon Linea Aerea Nacional-Chile (LAN), Braniff Airways, Inc., National Airlines, Inc., Pan American World Airways, Inc., and the Ambassador of Chile in Washington, D.C.

[8] Our tentative finding is based upon the fact that amendment of LAN's permit will not result in a siginficant increase in civil aviation operations at U.S. points: no new U.S. point will receive service as a result of this amendment, which adds a single European point to an existing LAN route.

[9] Since provision is made for the filing of objections to this order, petitions for reconsideration will not be entertained.

This order shall be published in the FEDERAL REGISTER and will be transmitted to the President.

By the Civil Aeronautics Board.[10]

PHYLLIS T. KAYLOR,
Secretary.

SPECIMEN PERMIT

PERMIT TO FOREIGN AIR CARRIER; AS AMENDED

Linea Aerea Nacional-Chile (LAN) is authorized, subject to the provisions set forth in this permit, the provisions of the Federal Aviaition Act of 1958, and the orders, rules, and regulations issued under the Act, to engage in foreign air transportation of persons, property, and mail, as follows: Between a point or points in Chile, the intermediate points Lima, Peru; Guayaquil, Ecuador; Cali, Colombia; Panama City, Panama; and the coterminal points Miami, Fla., and New York, N.Y.; and beyond to Frankfurt, Federal Republic of Germany.

The authority of the holder to serve Frankfurt, Federal Republic of Germany, is limited to foreign air transportation of property and mail only.

The holder shall be authorized to engage in charter trips in foreign air transportation subject to the terms, conditions, and limitations prescribled by part 212 of the Board's Economic Regulations.

The holder shall conform to the airworthiness and airmen competency requirements prescribed by the Government of Chile for Chilean international air service.

This permit shall be subject to all applicable provisions of any treaty, convention, or agreement affecting international air transportation now in effect, or that may become effective during the period this permit remains in effect, to which the United States and Chile shall be parties.

The holder shall keep on deposit with the Board a signed counterpart of CAB Agreement 18900, an agreement relating to the liability limitations of the Warsaw Convention and the Hague Protocol approved by Board Order E-23680, May 13, 1966, and a signed counterpart of any amendment or amendments to such agreements which may be approved by the Board and to which the holder becomes a party.

The holder: (1) shall not provide foreign air transportation under this permit unless there is in effect third-party liability insurance in the amount of $1,000,000 or more to meet potential liability claims which may arise in connection with its operations under this permit, and unless there is on file with the Docket Section of the Board a statement showing the name and address of the insurance carrier and the amounts and liability limits of the third-party liability insurance provided, and (2) shall not provide foreign air transportation of persons unless there is in effect liability insurance sufficient to cover the obligations assumed in CAB Agreement 18900, and unless there is on file with the Docket Section of the Board a statement showing the name and address of the insurance carrier and the amounts and liability limits of the passenger liability insurance provided. Upon request, the Board may authorize the holder to supply the name and address of an insurance syndicate in lieu of the names and addresses of the member insurers.

The initial tariff filed by the holder shall not set forth rates, fares, and charges lower than those that may be in effect for any U.S. air carrier in the same foreign air transportation; however, this limitation shall not apply to a tariff filed after the initial tariff regardless of whether this subsequent tariff is effective before or after the introduction of the authorized service.

By accepting this permit the holder waives any right it may possess to assert any defense of sovereign immunity from suit in any action or proceeding instituted against the holder in any court or other tribunal in the United States (or its terrirories or possessions) based upon any claim arising out of operations by the holder under this permit.

The exercise of the privileges granted here shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

This permit shall be effective on ———. Unless otherwise terminated at an earlier date pursuant to the terms of any treaty, convention, or agreement, this permit shall terminate: (1) upon the effective date of any treaty, convention, or agreement, or amendment thereto, which shall have the effect of eliminating the routes here authorized from the routes which may be operated by airlines designated by the Government of Chile (or in the event of the elimination of any part of a route or routes hereby authorized, the authority granted shall terminate to the extent of such elimination), or (2) upon the effective date of any permit granted by the Board to any other carrier designated by the Government of Chile in lieu of the holder hereof, or (3) upon the termination or expiration of the Air Transport Services Agreement between the Government of the United States and the Government of Chile, signed May 10, 1947, effective December 30, 1948: *Provided, however*, That clause (3) of this paragraph shall not apply if, prior to the occurance of the event specified in clause (3), the operation of the foreign air transporation herein authorized becomes the subject of any treaty, convention, or agreement to which the United States and Chile are or shall become parties.

The Civil Aeronautics Board has directed its Secretary to execute this permit and affix the seal of the Board on ———.

Secretary.

[SEAL]

Issuance of this permit to the holder approved by the President of the United States on ——— in ———.

[FR Doc. 78-8813 Filed 4-3-78; 8:45 am]

[6320-01]

[Docket 31554; Order 78-3-153]

SCHENKER & CO. G.m.b.H. (GERMANY) d.b.a. SCHENKERS INTERNATIONAL FORWARDERS, INC.

Application for Renewal of its Indirect Foreign Air Carrier Permit; Order To Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 30th day of March 1978.

Schenker & Co. G.m.b.H. (Germany) d.b.a Schenkers International Forwarders, Inc., holds a foreign air carrier permit authorizing it to engage in indirect foreign air transportation of

[10] All Members concurred.

property from any point or points in the United States to any point or points outside the United States, subject to conditions.[1]

On October 20, 1977, Schenker filed an application to renew its permit for a period of five years.[2] Schenker states that it continues to be organized under the laws of West Germany; that its capital stock is beneficially owned by the German Federal Railroad; the management is vested wholly in four German nationals who reside in West Germany; and that the Government of West Germany exercises no control over the applicant.

No answers were filed to the application.

It is tentatively found and concluded that the applicant has complied with the terms, conditions and limitations set forth in Order 75-10-112 governing its original permit and may be expectged to do so upon renewal.

On the basis of the foregoing, it is tentatively found and concluded that:

1. Schenker is fit, willing, and able properly to perform the foreign indirect air transportation proposed in its application and to conform to the provisions of the Act and the rules, regulations, and requirements of the Board;

2. Schenker is substantially owned and effectively controlled by citizens of West Germany;

3. Since no issues in this application appear to be contested, an oral hearing on Schenker's application is not required in the public interest;

4. It is in the public interest to renew for a period of five years the foreign indirect air carrier permit of Schenker, authorizing it to engage indirectly in foreign air transportation of property from any point or points in the United States to any point or points outside the United States; and

5. The public interest requires that the exercise of the privileges granted by the permit should be subject to the terms, conditions, and limitations prescribed therein, the conditions set forth in paragraphs (a), (b), (c), (d), and (e) below, and such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board:

(a) In respect to operations conducted pursuant to the authority granted by said permit, the holder, with respect to the use of aircraft, shall be subject to the provisions of sections 296.21, 296.22, and 296.41 of the Board's Economic Regulations, as currently in effect or later amended;

(b) The holder shall comply with the insurance coverage provisions of section 296.52 of the Board's Economic Regulations, or as amended, except that it shall not be necessary for the holder to provide public liability insurance for its operations outside the United States;

(c) In using the authority granted here (1) the name Schenker & Co. G.m.b.H. (Germany) d.b.a. Schenkers International Forwarders, Inc., shall appear on all of the holder's advertising, airway bills, stationery and the like; (2) the above name will always be used in its entirety; and (3) the name Schenker & Co. G.m.b.H. (Germany) shall be displayed at least as prominently as the name Schenkers International Forwarders, Inc.;

(d) The holder shall not perform any forwarding services authorized by its permit on behalf of any company affiliated therewith, except in accordance with its published tariffs; shall not, with respect to services performed on behalf of, or related to, any affiliated company, extend any preference or advantage of any nature to any of said companies and shall, with respect to all matters which may relate to the performance of services authorized by its permit, deal with said companies in the same manner and on the same basis as with any other person; and

(e) The holder shall comply with all applicable record retention provisions of Part 249B and with section 9 of Part 244 of the Board's Regulations and shall file such other reports as the Board may hereafter prescribe: *Provided, however,* That the holder shall set forth, with respect to the cargo carried pursuant to its permit, the amount of said cargo transported by each direct air carrier and foreign direct air carrier utilized by the holder; *Provided, further,* That the holder shall set forth, with respect to each matter reported, the pounds carried, points operated to, revenues and expenses, and other information to the extent pertinent, indicating with respect to each such matter reported the nature and extent of business conducted on behalf of or related to any affiliated company of the holder; and *Provided, further,* That the holder shall similarly file a report within two months after the expiration of its fiscal year, setting forth all transactions with the aforesaid companies which relate in any manner to the services authorized by the holder's permit and which are not included in the foregoing report.

Accordingly, it is ordered, That: 1. All interested persons are directed to show cause why the Board should not issue an order making final the tentative findings and conclusions, and why the indirect foreign air carrier permit issued to Schenker & Co. G.m.b.H. (Germany), d.b.a. Schenkers International Forwarders, Inc., should not, subject to the approval of the President under section 801 of the Act, be renewed for a period of five years, subject to conditions;

2. Any interested person having objection to the issuance of an order making final the Board's tentative findings and conclusions and renewing the foreign air carrier permit shall within 21 days after the adoption of this order file with the Board and serve upon the persons named in paragraph 5, a statement of objections specifying the part or parts of the tentative findings and conclusions objected to, together with a summary of testimony, statistical data and such evidence expected to be relied upon in support of the statement of objections. If an oral evidentiary hearing is requested, the objector should state in detail why such oral hearing is considered necessary and what relevant and material facts he would expect to establish through such hearing which cannot be established in written pleadings;

3. If timely and properly supported objections are filed, further consideration will be given to the matters and issues raised by the objections before further action is taken by the Board: *Provided,* That the Board may proceed to enter an order in accordance with its findings and conclusions set forth in this order if it is determined that there are no factual issues present that warrant the holding of an oral evidentiary hearing;[3]

4. In the event no objections are filed, all further procedural steps will be deemed to have been waived, and the Secretary shall enter an order which (1) shall make final the Board's tentative findings and conclusions set forth in this order, and (2) subject to the approval of the President, shall issue a renewed indirect foreign air carrier permit to Schenker & Co. G.m.b.H. (Germany), d.b.a. Schenkers International Forwarders, Inc., in the specimen form attached; and

5. This order shall be served upon Schenker & Co. G.m.b.H. (Germany), d.b.a. Schenkers International Forwarders, Inc., the Ambassador of the Federal Republic of Germany in Washington, D.C., and the Departments of State and Transportation.

This order will be published in the FEDERAL REGISTER and transmitted to the President.

[1] Order 75-10-112, effective October 23, 1975. The applicant's authority terminated October 22, 1977, but continues to be operative under the automatic extension provisions of 5 U.S.C. 558(c).

[2] A copy of the application has been transmitted to the President of the United States in accordance with section 801 of the Act.

[3] Since provision is made for the filing of objections to this order, petitions for reconsideration will not be entertained.

By the Civil Aeronautics Board.[4]

PHYLLIS T. KAYLOR,
Secretary.

SPECIMEN PERMIT

PERMIT TO FOREIGN INDIRECT AIR CARRIER

Schenker & Co. G.m.b.H. (Germany), d.b.a. Schenkers International Forwarders, Inc. is hereby authorized, subject to the provisions set forth here, the provisions of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage indirectly in foreign air transportation of property from any point or points in the United States to any point or points outside the United States.

This permit shall be subject to all applicable provisions of any treaty, convention, or agreement affecting the right to engage in indirect air transportation of property now in effect, or that may become effective during the period this permit remains in effect, to which the United States and the Federal Republic of Germany shall be parties.

This permit shall be subject to the condition that in the event that any practice develops which the Board regards as inimical to sound business conditions the holder and the Board will consult with respect thereto and will use their best efforts to agree upon modifications satisfactory to the Board and the holder.

The exercise of the privileges granted hereby shall be subject to the terms, conditions, and limitations set forth in Order 78——, dated ———, 1978, and to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

By accepting this permit the holder waives any right it may possess to assert any defense of sovereign immunity from suit in any action or proceeding instituted against the holder in any court or other tribunal in the United States (or its territories or possessions) based upon any claim arising out of operations by the holder under the permit.

This permit shall became effective on ———, 1978, and shall terminate five years thereafter: *Provided, however,* That if during said period the operation of the foreign indirect air transportation herein authorized becomes the subject of any treaty, convention or agreement to which the United States and the Federal Republic of Germany are or shall become parties, then and in that event this permit shall continue in effect during the period provided in such treaty, convention or agreement.

The Civil Aeronautics Board has directed its Secretary to execute this permit and affix the seal of the Board on ———.

Secretary.

Issuance of this permit to the holder approved by the President of the United States on ————, in————.

[FR Doc.78-8814 Filed 4-3-78; 8:45 am]

[4]All Members concurred.

[6355-01]

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket Number 78-1]

FLAMMABLE FABRICS ACT

Publication of Complaint and Proposed Order

Under provisions of its Rules of Practice for Adjudicative Proceedings (16 CFR Part 1025), the Commission must publish in the FEDERAL REGISTER Complaints which it issues under the Flammable Fabrics Act.

Printed below is a Complaint and Proposed Order in the matter of Spare Parts, a corporation also trading as "Mr. Marty," or under any other names, and Stuart M. Weiser, individually and as an officer of the corporation.

Dated: March 30, 1978.

SADYE E. DUNN,
Acting Secretary, Consumer Product Safety Commission.

[CPSC Docket No. 78-1]

COMPLAINT

In the matter of Spare Parts, a corporation also trading as "Mr. Marty," or under any other name or names and Stuart M. Weiser, individually and as an officer of the corporation.

The Staff of the Consumer Product Safety Commission (Commission) believes that Spare Parts, a corporation also trading as "Mr. Marty," and Stuart M. Weiser, individually and as an officer of the corporation, have violated provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.), the Flammable Fabrics Act (15 U.S.C. 1191 et seq.), in that they manufactured and sold products which violated the Standard for the Flammability of Clothing Textiles (16 CFR 1610) and the regulations issued by the Commission to implement the Clothing Textiles Standard (16 CFR 1610 Subpart B).

JURISDICTION

Commission jurisdiction over this matter is based on the transfer of functions under the Flammable Fabrics Act and the Federal Trade Commission Act to the Commission by section 30 of the Consumer Product Safety Act (15 U.S.C. 2051, 2079).

Section 3(a) of the Flammable Fabrics Act (15 U.S.C. 1192(a)) provides that the manufacture for sale, the sale, or the offering for sale in commerce, or the introduction, delivery for introduction or causing to be transported, in commerce, or the sale or delivery after a sale or shipment in commerce, of any product, fabric, or related material which fails to conform to an applicable Standard or regulation issued or amended under the provisions of section 4 of this Act, shall be unlawful and shall be an unfair method of competition and an unfair and deceptive act or practice in commerce under the Federal Trade Commission Act. Pursuant thereto, section 5 of the Federal Trade Commission Act (15 U.S.C. 41, 45) authorizes the Commission to commence proceedings leading to a cease and desist order whenever it has reason to believe that any person, partnership or corporation has been or is using any unfair method of competition or unfair or deceptive act or practice in or affecting commerce, and that the proceedings would be to the interest of the public.

The Commission has reason to believe, on the basis of evidence presented by the Staff, that violations of the Acts may have occurred. It appears to the Commission that it would be in the interest of the public to issue this Complaint to commence adjudicatory proceedings. Therefore, pursuant to the foregoing Acts and the Interim Rules of Practice for Adjudicative Proceedings (16 CFR Part 1025, 42 FR 31432, June 21, 1977), the Commission has authorized the Staff to issue this Complaint.

RESPONDENTS

Respondent Spare Parts is a corporation organized and doing business under the laws of the state of California. It is a manufacturer of articles of wearing apparel sold under the trade names of Spare Parts and Mister Marty.

Respondent Stuart M. Weiser is the president of Spare Parts and as such, formulates, directs and controls the acts, practices and policies of the corporation. Their offices and principal place of business are located at 3655 South Grand Avenue, Los Angeles, Calif. 90007.

VIOLATIONS CHARGED

1. Respondents have been engaged in the manufacturing for sale, sale and offering for sale in commerce, and have introduced, delivered for introduction and caused to be transported in commerce, and have sold or delivered after sale or shipment in commerce products, as the term "commerce" and "products" are defined in the Flammable Fabrics Act, that fail to conform to the requirements of the Standard for Flammability of Clothing Textiles (16 CFR Part 1610) in violation of section 3(a) of the Flammable Fabrics Act (15 U.S.C. 1191, 1192), to wit:

(a) On or before October 30, 1976, Respondents manufactured for sale in commerce from piece goods fabrics supplied by the Sterned Knitting Mills, Inc., New York City, N.Y., and sold and delivered after sale and shipment in commerce, "Spare Parts" girl's sweatshirts in style 3401 (bell

shaped sleeve) and 3405 and "Mister Marty" sweatshirts in style 6402 that failed the acceptance criterion of the Standard for the Flammability of Clothing Textiles, (16 CFR Part 1610) in violation of section 3(a) of the Flammable Fabrics Act (15 U.S.C. 1191, 1192).

(b) On or before October 30, 1976, Respondents sold, delivered for introduction and caused to be transported in commerce to a retail chain in Spokane, Washington, and to approximately 400 additional retailers throughout the country, "Spare Parts" girls sweatshirts in style 3401 (bell shaped sleeves) and 3405 and "Mister Marty" sweatshirts in style 6402 that failed the acceptance criterion of the Standard for the Flammability of Clothing Textiles in violation of section 3(a) of the Flammable Fabrics Act (15 U.S.C. 1191, 1192).

2. Issuing a false guaranty with respect to "Spare Parts" sweatshirts in style 3401 (bell shaped sleeve) and 3405 and "Mister Marty" sweatshirts in style 6402 by furnishing guaranties based upon class tests and failing to maintain records required by 16 CFR 1610.38(b) in violation of section 8(b) of the Flammable Fabrics Act (15 U.S.C. 1191, 1197(b)).

3. Issuing a false guaranty with respect to "Spare Parts" sweatshirts in Style 3401 (bell shaped sleeve) and 3405 and "Mister Marty" sweatshirts in style 6402 by furnishing guaranties based upon guaranties received and failing to maintain records required by 16 CFR 1610.38(c) in violation of section 8(b) of the Flammable Fabrics Act (15 U.S.C. 1191, 1197(b)).

4. Issuing a false guaranty with respect to "Spare Parts" sweatshirts Style 3401 (bell shaped sleeve) and 3405 and "Mister Marty" sweatshirts in style 6402 by issuing such guaranties without conducting tests as required by 16 CFR 1610.38 in violation of section 8(b) of the Flammable Fabrics Act (15 U.S.C. 1191, 1197(b)).

5. The aforesaid acts and practices of respondents were and are in violation of the Flammable Fabrics Act, as amended, and the rules and regulations promulgated thereunder and as such constitute unfair methods of competition and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

6. Attached hereto are copies of the principal items of written evidence which Staff believes supports the charges herein and which accompanied Staff's recommendation to the Commission as to whether this Complaint should issue.

7. Attached hereto also is a list and summary of additional documentary evidence supporting the charges contained in this Complaint. The aforementioned documents shall not preclude Complaint Counsel from offering further evidence bearing on the subject matter.

8. The Staff of the Commission believes the issuance of a cease and desist order requiring, among other things, compliance with the Flammable Fabrics Act, in keeping with the proposed Order attached hereto is the form of relief that is in the public interest.

The following is the form of Order which the Commission has reason to believe should be issued if the facts are found to be as alleged in the Complaint. Respondents have voluntarily initiated the recall provisions of this Order. If, however, the Commission concludes from the record developed in any adjudicative proceedings in this matter that the provisions of the proposed Order would not be adequate to fully protect the consuming public, the Commission may order such relief as it finds necessary or appropriate.

ORDER

I

It is ordered, That Spare Parts also trading as "Mr. Marty", its successors and its officers, and Stuart M. Weiser, individually and as an officer of the corporation, (hereinafter referred to as Respondents in this Order), and their agents, assigns, representatives and employees directly or through any corporation, subsidiary, division, or other instrumentality, do forthwith cease and desist from manufacturing for sale, selling, offering for sale, in commerce, or importing into the United States, or introducing, delivering for introduction, transporting or causing to be transported in commerce, or selling or delivering after sale or shipment in commerce, any product, fabric, or related material; or manufacturing for sale, selling, or offering for sale, any product made of fabric or related material, which has been shipped or received in commerce, as "commerce," "product," "fabric" and "related material" are defined in the Flammable Fabrics Act, which product, fabric or related material fails to conform to the requirements of an applicable standard or regulation issued under the provisions of the Act.

Specifically, Respondents Spare Parts also trading as "Mr. Marty" and Weiser are hereby ordered to cease and desist from:

1. Manufacturing for sale, and selling in commerce, "Spare Parts" sweatshirts in styles 3401 (bell-shaped sleeve) and 3405 and "Mister Marty" sweatshirts in style 6402, which fail to comply with the requirements of the Standard for the Flammability of Clothing Textiles. (16 CFR Part 1610 et seq.).

2. Issuing a false guaranty with respect to "Spare Parts" sweatshirts in style 3401 (bell shaped sleeve) and 3405 and "Mister Marty" sweatshirts in style 6402 by furnishing guaranties based upon class tests and failing to maintain records required by 16 CFR 1610.38(b) in violation of section 8(b) of the Flammable Fabrics Act (15 U.S.C. 1191, 1197(b)).

3. Issuing a false guaranty with respect to "Spare Parts" sweatshirts in style 3401 (bell shaped sleeve) and 3405 and "Mister Marty" sweatshirts in style 6402 by furnishing guaranties based upon guaranties received and failing to maintain records required by 16 CFR 1610.38(c) in violation of section 8(b) of the Flammable Fabrics Act (15 U.S.C. 1191, 1197(b)).

4. Issuing a false guaranty with respect to "Spare Parts" sweatshirts style 3401 (bell shaped sleeve) and 3405 and "Mister Marty" sweatshirts in style 6402 by issuing such guaranties without conducting test as required by 16 CFR 1610.38 in violation of section 8(b) of the Flammable Fabrics Act (15 U.S.C. 1191, 1197(b)).

II

It is further ordered, That the Respondent shall notify by certified mail all customers who may have purchased "Spare Parts" sweatshirts in styles 3401 (bell-shaped sleeve) and 3405 and "Mister Marty" sweatshirts in style 6402 that those articles do not comply with the Standard for the Flammability of Clothing Textiles (CS 191-53) and may be dangerously flammable and that any customer who has purchased a sweatshirt in any of the styles described above may return it to the Corporations and Weiser for replacement or a complete refund of the purchase price at the option of the Corporation and Weiser.

Where said garments have been sold to the ultimate consumer, the following steps will be taken to contact and notify such customers that samples tested by the Commission showed that the garments failed to meet the Flammability Standard for Clothing Textiles (CS 191-53) and that such garments may be returned to the respondents for exchange or full refund of the purchase price. The respondent shall notify such ultimate consumer by:

A. Furnishing to each retail store to which the Corporation and Weiser have distributed "Spare Parts" sweatshirts in styles 3401 (bell-shaped sleeve) and 3405 and "Mister Marty" sweatshirts in style 6402, a sign which shall be not less than 22 inches by 28 inches in size and shall contain at least one illustration of each type of garment being recalled.

B. Consumers will be advised by notice on the 22 x 28-inch signs to obtain information and arrange for return of garments by wiring the company collect, by placing a collect tele-

phone call to a telephone number conspicuously set out in the notice or by writing to the company.

C. Retailers will be advised to prominently display the 22 x 28 inch signs on each floor of each store or other establishment open to the public where the above sweatshirts are displayed or sold.

III

It is futher ordered, That the Respondents shall either process all sweatshirts recalled or in inventory to bring them into conformance with the Standard or destroy them.

IV

It is further ordered, That the Respondents shall maintain records sufficient to establish the notification, recall, reprocessing and/or destruction of the products specified in Paragraphs II and III.

V

It is further ordered, That the Respondents shall, within fifteen (15) days after service upon them of this Order, file with the Commission a special written and notarized report which:

A. Sets forth the manner in which they intend to comply with every aspect of this Order.

B. Advises the Commission fully and specifically concerning (1) the identity of the products to be recalled as provided in Paragraph III of this Order, (2) the identity of the purchasers of the said products, (3) the amount of the products on hand and in the channels of commerce, and the amount returned pursuant to the said recall, (4) any action taken in conformance with the provisions of Paragraph III of this Order and any further actions proposed to be taken to notify such customers and ultimate consumer of the flammability of the products and effect the recall of the products from customers and ultimate consumers, and of the results thereof, and (5) any action taken or proposed to be taken to bring the products into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or to destroy the products, and the results of such action.

VI

It is further ordered, For a period of 10 years from the date this Order is issued by the Commission on a final basis, that Respondents shall notify the Commission at least 30 days prior to any proposed change in the status of any corporation named as Respondent in this Order such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change which may affect its compliance obligations arising out of this Order.

VII

It is further ordered, For a period of 10 years from the date this Order is issued by the Commission on a final basis, that any individual who is named as a Respondent to this Order shall promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. Such notice shall include his current business address and a statement as to the nature of the business or employment in which he is engaged as well as a description of his duties and responsibilities.

VIII

It is further ordered, That the Respondents shall distribute a copy of this Order to each of the operating divisions of any corporation which is named as a respondent to this Order.

IX

The Commission may conduct inspections and/or require the Respondents to submit written reports to determine compliance with this Order, and may direct the Respondents to submit or permit the Commission to select for testing sufficient products subject to the standards promulgated under the Flammable Fabrics Act.

X

The requirements of this Order are in addition to and not to the exclusion of other remedies such as criminal penalties which may be pursued under section 7 of the Flammable Fabrics Act, the rules, regulations and standards promulgated thereunder or any other provision of Federal law.

Therefore, the Staff of the Consumer Product Safety Commission, with approval of the Commission, hereby issues this Complaint on the 27th day of March, 1978.

SAYDE E. DUNN,
Acting Secretary, Consumer Product Safety Commission.

[FR Doc. 78-8815 Filed 4-3-78; 8:45 am]

[3810-70]

DEPARTMENT OF DEFENSE

Office of the Secretary

DEFENSE INTELLIGENCE AGENCY SCIENTIFIC ADVISORY COMMITTEE

Closed Meeting

Pursuant to the provisions of subsection (d) of section 10 of Pub. L. 92-463, as amended by section 5 of Pub. L. 94-409, notice is hereby given that a closed meeting of a Panel of the DIA Scientific Advisory Committee will be held as follows: Monday and Tuesday, May 1-2, 1978, Sandia Corp., Albuquerque, N. Mex.

The entire meeting, commencing at 0900 hours each day, is devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a study on nuclear weapon technology.

MAURICE W. ROCHE,
Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.

MARCH 29, 1978.

[FR Doc. 78-8769 Filed 4-3-78; 8:45 am]

[3810-70]

DEFENSE SYSTEMS MANAGEMENT COLLEGE

Board of Visitor's Meeting

A meeting or the Board of Visitors of the Defense Systems Management College will be held in Building 202, Fort Belvoir, Va., on Tuesday, May 16, 1978, from 8:30 a.m. until 5 p.m. The agenda will include a review of plans, resources, and course offerings and a general discussion of DSMC operations. The meeting is open to the public; however, because of limitations on space available, allocation of seating will be made on a first-come, first-served basis. Persons desiring to attend should call the DSMC Director, Department of Administration, Operations, & Support (703-664-1314) to reserve a seat as far in advance as possible.

MAURICE W. ROCHE,
Director, Correspondence and Directives, Washington Headquarters Service, Department of Defense.

MARCH 29, 1978.

[FR Doc. 78-8770 Filed 4-3-78; 8:45 am]

[6560-01]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 876-5]

CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

List of Violating Facilities

Pursuant to section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Federal Water Pollution Control Act (33 U.S.C. 1368) and Executive Order 11738, EPA has been authorized to provide certain prohibitions and requirements concerning the administration of the Clean Air Act and Federal Water Pollution Control Act with respect to Federal contracts, grants, or loans. On April 16, 1975, regulations implementing the requirements of the

statutes and the Executive Order were promulgated in the FEDERAL REGISTER (see 40 CFR part 15, 40 Fr 17124, April 16, 1975). Section 15.20 of the regulations provides for the establishment of a List of Violating Facilities which will reflect those facilities ineligible for use in nonexempt Federal contracts, grants, or loans.

The respresentatives of any facility under consideration for listing are afforded the opportunity to appear at a Listing Proceeding conducted by the Director, Office of Federal Activities. Listing occurs when the Director determines there is adequate evidence of noncompliance with clean air or water standards. Federal, State, and local criminal convictions, civil adjudications, and administrative findings of noncompliance may serve as a basis for consideration of listing. However, in the case of a State or local civil adjudication or administrative finding, EPA may consider listing only at the request of the Governor.

The List of Violating Facilities is contained in two sublists. Sublist 1 includes those facilities listed on the basis of a conviction under section 113(c)(1) of the Clean Air Act or section 309(c) of the Federal Water Pollution Control Act. Sublist 2 includes those facilities listed on the basis of: any injunction, order, judgment, decree, or other form of civil ruling by a Federal, State, or local court issued as a result of noncompliance; or on the basis of noncompliance with an order under section 113(a) of the Clean Air Act or section 309(a) of the Federal Water Pollution Control Act; or having given rise to the initiation of court action under section 113(b) of the Clean Air Act or section 309(b) of the Federal Water Pollution Control Act; or having been subjected to equivalent State or local proceedings to enforce clean air or water standards.

No agency in the Executive Branch of Government shall enter into, renew, or extend any nonexempt contract, subcontract, grant, subgrant, loan, or subloan where a facility listed would be utilized for the purposes of any such agreement.

The purpose of this Notice is to add to Sublist 2 the facility of Velsicol Chemical Corp., Bayport, Tex.

Pursuant to this authority, the Director, Office of Federal Activities, U.S. Environmental Protection Agency, certifies that the following facilities are on the List of Violating Facilities as of March 29, 1978. The List of Violating Facilities will be revised periodically as any listings or de-listings occur.

LIST OF VIOLATING FACILITIES

Sublist 1

Allied-Chemical Corp., Semet-Solvay Division, Ashland, Ky.

Sublist 2

ITT Rayonier, Inc., Fernandina Beach, Fla., Velsicol Chemical Corp., Bayport, Tex.

Dated: March 29, 1978.

JOSEPH M. MCCABE,
Acting Director, Office of Federal Activities (A-104).

[FR Doc. 78-8834 Filed 4-3-78; 8:45 am]

[6560-01]

[OPP-180180; FRL 876-8]

FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Issuance of Specific Exemption To Use Benomyl To Control Stalk Rot on Potatoes

The Environmental Protection Agency (EPA) has granted a specific exemption to the Florida Department of Agriculture and Consumer Services (hereafter referred to as the "Applicant") to use up to 21,000 pounds of Benlate, containing the active ingredient benomyl, for the control of stalk rot on 7,000 acres of white potatoes in Dade County, Fla. This exemption was granted in accordance with, and is subject to, the provisions of 40 CFR Part 166, which prescribes requirements for exemption of Federal and State agencies for use of pesticides under emergency conditions.

This notice contains a summary of certain information required by regulation to be included in the notice. For more detailed information, interested parties are referred to the application on file with the Registration Division (WH-567), Office of Pesticide Programs, EPA, 401 M Street SW., room E-315, Washington, D.C. 20460.

According to the Applicant, stalk rot, which is caused by the phytopathogenic fungus *Sclerotinia sclerotiorum*, is a major pest of white potatoes in Dade County. The fungus was considered a minor pest of the potatoes until the 1960's, when the South Florida Water Management District drained the marl potato production fields by digging drainage ditches. The fields no longer stay flooded over a sufficient enough period of time to kill the sclerotia (hardened masses of hyphae) which survive through the summer. On potatoes, *S. sclerotiorum* has been observed on occasion to attack the young vines very soon after emerging; however, the disease is observed more often at layby when the leaves touch the soil. At this time, there is a optimum environment for this fungus to produce spores, which land on the vines, germinate, infect, and eventually kill the infected tissue. This disease occurs annually on the potato crops from November through March.

The Applicant stated that, in the past, calcium cyanamide has been use to control *S. sclerotiorum;* however, this material is no longer manufactured in the United States. The Applicant further stated that there are no alternative fungicides registered for control of this fungus on potatoes in Florida. Botran is known to be registered for control of white mold (*Sclerotimia*) on potatoes in the North Central States; However, it is not satisfactory in Florida because it may induce phytotoxic effects such as leaf bronzing and a reduction in tuber size. While it would be possible to artificially flood the field, it is not possible this year because potato planting has already begun.

Over the past years, the Applicant estimated that yield losses due to *S. sclerotiorum* have averaged 34 percent, with the value of the crop ranging between 7 to 10 million dollars; last year, losses due to this pest were estimated to be 1 million dollars.

The Applicant proposed to use Benlate, applied by ground equipment, at a dosage rate of 1 to 1.5 pounds product (0.50 to 0.75 active ingredient) in sufficient water. The higher rate will be used under severe conditions. All of the treatments will be confined to 7,000 acres of potatoes in Dade County, once the presence of the fungus is verified.

It should be noted that a rebuttable presumption against registration of pesticide products containing benomyl was published in the FEDERAL REGISTER on December 6, 1977 (42 FR 61788); however, no decision has yet been made by EPA as to appropriate regulatory action in this matter. EPA has determined that this use of benomyl on potatoes does not appear to introduce any significant new hazard to man than what may exist through present use patterns of benomyl. The residue levels of benomyl likely to occur are small (0.05 ppm); tolerances for benomyl are established on a wide variety of crops, in addition to meat, poultry, milk, and eggs.

Overall, this short-term use of benomyl will not significantly affect any populations of either invertebrates or vertebrates that are well-established. Consultation with the Fish and Wildlife Service of the U.S. Department of the Interior (USDI) indicated that there are two endangered species known to frequent Dade County: the Cape Sable Sparrow (*Ammospiza maritima mirabilis*) and the American Crocodile (*Crocodylus acutus*). However, it is not firmly established that these species occur in the particular area of Dade County in which the potato fields are located; it is highly unlikely, for example, that the American Crocodile would be present near drained agricultural fields. Nonetheless, special precautions concerning treatment will be taken in connection with these two endangered species.

After reviewing the application and other available information, EPA has

determined that (a) a pest outbreak of *S. sclerotiorum* has or is about to occur; (b) there is no pesticide presently registered and available for use to control this pest in Dade County, Fla.; (c) there are no alternative means of control, taking into account the efficacy and hazard; (d) significant economic problems may result if the fungus is not controlled; and (e) the time available for action to mitigate the problems posed is insufficient for a pesticide to be registered for this use. Accordingly, the Applicant has been granted a specific exemption to use the pesticide noted above until April 30, 1978, to the extent and in the manner set forth in the application. The specific exemption is also subject to the following conditions:

1. The product Benlate, containing the active ingredient benomyl, is authorized at a dosage rate of from 1.0 to 1.5 pounds product (0.50 to 0.75 pound active ingredient) per 100–125 gallons of water/acre. Two applications are authorized, the first approximately 7 to 8 weeks after planting and the second 2 to 3 weeks later;
2. Up to 21,000 pounds of product is authorized;
3. The presence of *S. sclerotiorum* in a given potato growing area must be verified by Florida State Extension personnel before any applications of benomyl are made;
4. Treatment is authorized in the following area of Dade County: the marl soils east of Highway U.S. 1, running east to within ¼ mile of Biscayne Bay and the inland grade and marl prairies west of Highway U.S. 1, and bounded on the west by Country Club Road (Southwest 202d Avenue);
5. Applications may be made by either private or commercial applicators. Application must be made by ground equipment only;
6. All label directions, precautions, and restrictions must be followed;
7. Potatoes with residues of benomyl and its metabolites not exceeding 0.05 ppm may enter interstate commerce. The Food and Drug Administration of the U.S. Department of Health, Education, and Welfare has been advised of this action;
8. A full report summarizing the results of this program must be submitted to EPA by the end of March 1979;
9. The EPA shall be immediately informed of any adverse effects resulting from the use of benomyl in connection with this exemption; and
10. The Applicant must take precautions to insure that application of benomyl will not be made in areas where the Cape Sable Sparrow and the American Crocodile are known to occur.

(Sec. 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 89 Stat. 751; 7 U.S.C. 136(a) et seq.).)

Dated: March 28, 1978.

EDWIN L. JOHNSON,
Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 78-8882 Filed 4-3-78; 8:45 am]

[6560-01]

[OPP-180178; FRL 877-1]

FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Issuance of a Specific Exemption To Use Ambush and Monitor To Control the Vegetable Leafminer on Celery

The Environmental Protection Agency (EPA) has granted a specific exemption to the Florida Department of Agriculture and Consumer Services (hereafter referred to as the "Applicant") to use Ambush (Permethrin) and Monitor for the control of the Vegetable Leafminer on 11,000 acres of celery located in Orange, Palm Beach, Seminole, and Sarasota Counties, Fla. This exemption was granted in accordance with, and is subject to, the provisions of 40 CFR part 166, which prescribes requirements for exemption of Federal and State agencies for use of pesticides under emergency conditions.

This notice contains a summary of certain information required by regulation to be included in the notice. For more detailed information, interested parties are referred to the application on file with the Registration Division (WH-567), Office of Pesticide Program, EPA, 401 M Street SW., Washington, D.C. 20460.

According to the Applicant, emergency conditions exist in Florida due to an outbreak of the Vegetable Leafminer (*Liriomyza sativae*) on celery. The Applicant promulgated a crisis exemption on December 8, 1977, for the use of Monitor to control these pests; this pesticide was used in accordance with label restrictions. Since treatment pursuant to the crisis exemption was expected to continue for more than 15 days, specific exemption requests for the use of both Monitor and Ambush were submitted.

Leafminers develop in the photosynthetic tissue of the leaf, producing characteristic serpentine mines as they feed. They directly damage celery by mining the leaves of the plant; heavily mined leaves sometimes have nearly 100 percent of their mesophyll (photosynthetic tissue) removed. Leafminer damage to the celery results in reduced quality and leaf death; ultimately, the plant branches die. This damage necessitates stripping, trimming, and culling, which drastically reduces yields and quality, the Applicant stated; further, complete fields may be lost or marketed only as a salvage operation by the grower.

The Applicant proposed to use Monitor and Ambush to control this pest. The post-harvest intervals of the two pesticides are important factors, since a sudden outbreak of leafminers can destroy celery in 4 days. Ambush was preferred by the growers because it can be applied up to the harvest; the Applicant also stated that it was felt that Ambush was more effective for leafminer control than Monitor. However, the Applicant alleged that Monitor is more effective than the registered alternatives: Cygon, Dibrom, Diazinon, Orthene, and Vydate; these alternate pesticides are ineffective when subjected to high population pressures. Moreover, leafminers have developed resistance to many organophosphates.

The total dollar return from 10,500 acres of the 1976-77 celery crop in Florida was $30,000,000. The Applicant estimated that 50 percent of the total 11,000 acres planted this season may be lost without the use of an effective pesticide. In addition to this loss, the remaining half of the crop is expected to be seriously damaged. Based on these estimates, the direct loss from leafminer damage this season could be valued at $22,500,000.

Communication with the Fish and Wildlife Service of the U.S. Department of the Interior (USDI), indicated that there was concern about the use of Monitor in the Palm Beach County area. The celery fields are adjacent to canals, lakes, and marshes which are habitats for many avian species. Of particular concern was the Everglade Kite, an endangered species. Monitor is known to be toxic to birds and other wildlife. Further, EPA concluded that contamination of aquatic habitats by aerial application of Ambush could result in adverse effects on the Everglade Kite, the Southern Bald Eagle (also an endangered species), and other fish and wildlife species. However, aquatic contamination of a large magnitude is not expected if Ambush is applied only by ground equipment; therefore, this restriction was placed on application of both pesticides.

After reviewing the application and other available information, EPA has determined that: (a) A pest outbreak of leafminers on celery has occurred; (b) there is no pesticide presently registered and available for use to control this pest in Florida; (c) there is no alternative means of control, taking into account the efficacy and hazard; (d) significant economic problems may result if the leafminers are not controlled; and (e) the time available for action to mitigate the problems posed is insufficient for a pesticide to be registered for this use. Accordingly, the Applicant has been granted a specific exemption to use the pesticides noted above to the extent and in the manner set forth in the application. The specific exemption is also subject to the following conditions:

1. The products Monitor 4 and Ambush will be applied;
2. All applications will be made in the following areas: Zellwood in Orange County; Belle Glade, Pahokee, and South Bay in

Palm Beach County; Sanford and Oviedo in Seminole County; and Sarasota in Sarasota County;

3. Total acreage treated will not exceed 11,000 acres;

4. Applications of Monitor will be made at a rate of 0.5 to 1.0 pound active ingredient per acre per application. Up to five applications will be made at 7 day intervals. A 21 day pre-harvest interval will be observed;

5. Applications of Ambush (Permethrin) will be made at a rate of 0.1 to 0.2 pound active ingredient per acre per application at 3 to 5 day intervals. Up to 21 applications per season may be made with no pre-harvest interval;

6. All applications of Monitor and Ambush under this specific exemption will be made using ground equipment. Aerial application of Monitor was permitted under the crisis exemption promulgated December 8, 1977;

7. Monitor was applied in a minimum of 3 gallons of water per acre by air during the crisis exemption. The minimum spray mixture volume for ground application of Monitor will be 25 gallons per acre;

8. Ambush spray mixture volumes of 40 to 50 gallons of water per acre will be applied by ground equipment;

9. All applications will be made by qualified growers or State commercial certified applicators;

10. Ambush is toxic to fish and aquatic invertebrates, and Monitor is toxic to birds and other wildlife. Precautions will be taken to avoid contamination of lakes, streams, and ponds;

11. These products are highly toxic to bees exposed to direct treatment or residues on crop or weeds. The pesticides will not be applied, or allowed to drift, to weeds in bloom on which an economically significant number of bees are actively foraging. Protective information will be obtained from the State Cooperative Extension Service;

12. Precautions will be taken to avoid or minimize spray drift to nontarget areas;

13. Celery treated according to the above provisions is not expected to have residues of Monitor and Ambush in excess of 2.0 and 5.0 parts per million (ppm), respectively. Celery with residues of Monitor and Ambush which do not exceed these levels may enter interstate commerce. The Food and Drug Administration, U.S. Department of Health, Education and Welfare, has been advised of this action;

14. All applicable directions, restrictions, and precautions on the product labels must be followed;

15. The Florida Everglade Kite (*Rostrhamus socialbilis plumbeus*) and the Southern Bald Eagle (*Haliaeetus leucocephalus leucocephalus*) are endemic to regions in the treatment area. Applications of the pesticides according to the instructions and restrictions listed above is expected to minimize the risk to endangered species. Liaison should be established between the Applicant and the Florida Fresh Water Fish and Game commission in order to protect fish and wildlife;

16 The EPA will be immediately informed of any adverse effects resulting from the use of Monitor and Ambush in connection with this exemption;

17. The Applicant is responsible for assuring that all of the provisions of this specific exemption are met, and must submit a report summarizing the results of this program by September 1, 1978; and

18. All applications of Monitor under authority of the crisis and specific exemptions must be completed before January 16, 1978. Ambush may be applied as specified above until June 30, 1978.

AUTHORITY: Sec. 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 89 Stat. 751; 7 U.S.C. 136 et seq.).

Dated March 28, 1978.

EDWIN L. JOHNSON,
Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 78-8883 Filed 4-3-78; 8:45 am]

[6560-01]

[FRL 877-3; OPP-180171A]

STATE OF CALIFORNIA

Amendment to Specific Exemption To Use BAAM (Amitraz) To Control Pear Psylla

On February 10, 1978 (43 FR 5884), the Environmental Protection Agency (EPA) published a notice in the FEDERAL REGISTER which announced the granting of specific exemptions to the States of California and Utah to use BAAM[1] for the control of pear psylla on pears grown commercially in those two States. There were two separate specific exemptions issued, subject to the provisions of 40 CFR Part 166, which prescribes requirements for exemption of Federal and State agencies for use of pesticides under emergency conditions.

At the time of that publication, the specific exemption to California had been amended twice and was to expire on January 31, 1978. However, California has requested another amendment which would extend the expiration date to March 31, 1978, for the use of BAAM to control pear psylla during the dormant season.

According to California, heavy populations of adult pear psylla are occurring in Lake County, one of the four counties mentioned in the specific exemption. Although the adult and early nymphal stages can normally be controlled with supreme or superior oils or combinations of oil and lime sulfur or perthane, California stated that these materials are not providing adequate control of the high pear psylla populations. In addition, repeated oil sprays could cause fruit spur damage. California alleged that if the adult population could be severely reduced before egg laying starts, then the populations can be maintained at very low levels.

After reviewing the request and other available information, EPA has determined to issue another amendment to the specific extension previously granted to California. Accordingly, the expiration data of this specific extension will be March 31, 1978. All other provisions of the specific exemption remain in force; further, the extension of time will apply to all four counties previously involved. The specific exemption is also subject to the following conditions:

1. Before any additional post-harvest applications of BAAM are made, at least a moderate population of the pear psylla must be present. Criteria for determining a moderate population are as follows: 2 adult/50 beating trays, or 1 egg/25 fruit spurs;

2. The date of application, rate of application, and post-application counts (taken one week after the application) must be furnished to the Regional EPA office within two weeks after the application;

3. All applications must be observed by either EPA, County, or State inspectors; and

4. BAAM may be applied up to a time when no more than ten percent of the trees in a given orchard are in bloom, but no later than March 31, 1978.

(Sec. 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 89 Stat. 751; 7 U.S.C. 136(a) et seq.).)

Dated: March 29, 1978.

EDWIN L. JOHNSON,
Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 78-8835 Filed 4-3-78; 8:45 am]

[1] Contains 19.8 percent N'-(2,4-dimethylphenyl) - N - [[(2,4 - dimethylphenyl)imino] methyl]- N -methylmethanimidamide, which has the common name Amitraz.

[6560-01]

[FRL 877-2; OPP-36015]

PESTICIDE PROGRAMS

Notice of Denial of Applications to Register Sodium Monofluoroacetate for Use To Control Predators

INTRODUCTION

On April 8, 1977, the Environmental Protection Agency (EPA) received an application (EPA File Symbol 35978-E) from the Wyoming Department of Agriculture to register sodium monofluoroacetate (Compound 1080) for use as a predacide to control coyotes, red foxes, and other unspecified wild canids that may cause economic damage to domestic animals and crops. The applicant also proposes to use 1080 to suppress local populations of wild canids to control rabies and other epizootics. The product is specified as a "Restricted Use Pesticide" for use by Wyoming Department of Agriculture employees or their agents. Application was made pursuant to Section 3 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

In addition to this application, the Agency received an application on May 27, 1977, from the South Dakota Department of Agriculture (EPA File Symbol 13808-U) and an application on June 1, 1977, from the Colorado Department of Agriculture (EPA File

Symbol 33968-T) to use Compound 1080 in the same manner. The latter two applications rely on the data submitted by the Wyoming Department of Agriculture.

All three applications have been reviewed in accordance with the applicable regulations, and a determination has been made that the applications should be denied. The applicants were notified of this determination by letter dated March 15, 1978. A discussion of the background and basis for the denials is set forth below.

BACKGROUND

THE 1972 EPA ORDER

On March 9, 1972, registrations of 1080, sodium cyanide and strychnine for predator control uses were cancelled and suspended by EPA Administrative Order (37 FR 5718). The Order was not contested by any of the registrants or appealed by other persons who may have been adversely affected by it. The EPA Order followed Executive Order 11643 of February 8, 1972, banning the use of chemical toxicants for predator control on Federal lands. The EPA Order was based on EPA's own review of the use of poisons for predator control and on the findings of the Advisory Committee on Predator Control. The Advisory Committee was chaired by Dr. Stanley A. Cain and had been commissioned by the U.S. Department of the Interior and the President's Council on Environmental Quality to review and analyze predator control programs and policies in the United States.[1] Both the Cain Report and the EPA review relied extensively on the published literature, government (Federal, State, and local) sources, and non-government sources representing a diversity of interests and opinion.

In his decision to suspend and cancel the use of 1080, sodium cyanide, and strychnine as predacides, the Administrator concluded that a serious hazard to numerous non-target species, several of which are rare or endangered, arose from the unattended and unsupervised use of meat or fat baits containing highly toxic compounds over large areas of prairies and ranges. He noted that "Indiscriminate baiting over wide unpoliced areas poses two obvious and recognized threats to nontarget animals that share the ranges as a natural habitat. The unsupervised bait is itself a potential killer of nontarget range species. The threat, however, is compounded by the extremely high toxicity of these poisons which can transform the predator carcass into a potential lethal killer of prairie animal life." The Administrator considered these threats to be imminent because it was reasonably certain that the continued use of predacides would result in irremediable and uncorrectable losses, particularly of endangered species. He also warned that "The fact that label instructions contain directions for placing the baits at times and in areas least likely to be populated by non-target species and for policing them, affords slight, if any, comfort. This Agency has on prior occasions taken into account a 'commonly recognized practice' of use . . . and has noted that the likelihood of directions being followed may affect their adequacy . . ."

The Administrator observed that use of the three toxicants for predator control conferred only ill-defined and speculative benefits. He noted that there was an absence of any reliable data demonstrating the amounts of predator control achieved by the use of these poisons or indicating the extent of additional livestock losses which would occur without a predator control program. Furthermore, he found that effective and more selective non-chemical means of predator control exist, including denning, shooting, and trapping methods.

The 1972 EPA Order contained the following specific findings of fact with respect to 1080.

19. 1080 is highly toxic to all species. The dangerous dose for man is 0.5-2 mg/kg. The chemical acts rapidly upon the central nervous and cardiovascular systems with cardiac effects. Effect is usually too quick to permit treatment, and antidotes are relatively valueless.

20. According to one authority, prior to 1963 there were 13 proven fatal cases, five suspected deaths, and six nonfatal cases of 1080 poisoning in man, although it is not clear to what extent predator control materials were implicated.

21. There is evidence that a certain number of nontarget animals are being adversely affected by 1080 products, particularly, in the case of carrion eating birds and mammals, by secondary poisoning. It is not clear, however, how various animal populations are being affected, although 1080 is thought to have contributed to the death of at least one California condor, an endangered species.

On September 16, 1975, the Administrator modified the 1972 EPA Order so as to permit the registration of sodium cyanide for use in a spring-loaded ejector device known as the M-44 to control coyotes and certain other wild canid predators (40 FR 44726). The M-44 is equipped with an olfactory attractant rather than a meat bait and is triggered when a target animal pulls (with its teeth) on the casing holding the attractant. The decision to permit registration was based, in part, on the findings that the M-44 is selective for canids and poses only minimal hazards to non-target animals, an effective antidote exists for sodium cyanide poisoning, and the experimental use of the M-44 appeared to result in a trend toward decreased predatory losses of livestock.

APPLICABLE REGULATIONS

Pursuant to the provisions of Subpart D, part 164, 40 CFR, the applications to register 1080 as a predacide constitute petitions for reconsideration of the 1972 EPA Order. Subpart D requires that the Administrator determine, on the basis of the application and supporting data, whether there is substantial new evidence which may materially affect the prior Order and whether such evidence could not have been presented during the original proceedings. Therefore, reconsideration of the Administrator's 1972 Order is warranted only if (1) the applicants have presented substantial new evidence with respect to 1080 which may materially affect that Order, (2) such evidence was not available to the Administrator at the time he made the determination to cancel and suspend the registrations of 1080, and (3) such evidence could not, through the exercise of due diligence, have been discovered by the registrants or other proponents of continued registration prior to the issuance of the 1972 Order. Subpart D further provides that if it is determined that there is no such evidence, the applications will be denied without requirement for administrative hearing. If it is determined that there may be such evidence, and, hence, reconsideration of the prior Order is warranted, then a formal hearing will be convened to determine whether such evidence does in fact exist and whether such evidence requires reversal or modification of the prior Order.

LACK OF SUBSTANTIAL NEW EVIDENCE

GENERAL

In accordance with Subpart D, a determination has been made that the applicants have not submitted substantial new evidence which may materially affect the 1972 Order. Most of the sources of information submitted by the applicants are public documents predating the Order. In addition, many of the sources actually substantiate the concerns raised by the Administrator. When the applications and all supporting data are considered as a whole, they do not refute the Administrator's findings in regard to hazards posed by 1080 to non-target animals, lack of well-defined benefits conferred by 1080, and the availability of effective and more selective predator control methods. Therefore, the applications are denied.

The applications and submitted evidence are discussed below. The indi-

[1] The findings of this Committee were published in January 1972 as "Predator Control—1971; Report to the Council on Environmental Quality and the Department of the Interior." This report will subsequently be referred to as the Cain Report.

vidual sources of information are identified more fully in the Appendix.

SUMMARY OF APPLICATIONS

A. Methods of using 1080. The proposed labeling specifies two methods of using 1080 to control populations of coyotes, red foxes, and other wild canids. The first involves the use of large meat baits injected with 1080 at the rate of 1.6 grams of 1080 per 45.4 kilograms (100 lbs.) of bait material. A bait station will consist of one of these large baits securely fastened to a stationary solid object. The second method involves the use of small perishable baits of lard and other fats mixed with a single lethal dose of liquid, pelleted, or encapsulated 1080. These single dose baits are to be placed either near established draw stations consisting of non-poisoned animal remains designed to attract target animals or near preferred travel routes of the target species. It is recommended that ten to thirty of these baits be placed at each station site. The proposed instructions suggest that natural coverings, such as small flat stones or cowchips, be used to prevent the single dose baits from being seen and taken by scavenging birds.

Bait stations, whether consisting of single large meat baits or several small perishable fat baits, will ordinarily be placed at an average rate of one per township (36 square miles). However, a higher rate of placement is permitted by the proposed instructions. The bait stations are to be established in late fall or early winter and removed or destroyed in early spring.

B. Representations by applicants. The State of Colorado and the State of South Dakota have made no specific representations in their applications other than the fact that they are relying on the data submitted by the State of Wyoming. However, it is assumed that these States are also relying on the following representations made by the State of Wyoming to the extent they are applicable to them:

1. Regarding hazards to nontarget animals.

a. It has never been shown that any population of non-target organisms was ever harmed by the use of 1080 for predator control.

b. Standards developed by the American Society for Testing and Materials (ASTM) may provide adequate guidelines for protection of non-target species and the environment.

c. Certain fish and other cold blooded animals are very tolerent of 1080. In addition, the proposed use of 1080 precludes contamination of large bodies of water.

d. The relatively thin distribution of baits provides adequate protection to all non-target mammal populations since the coyote is the only mammalian scavenger in the West which commonly ranges over such a wide area.

e. National Parks and Forests are the primary habitat of non-target carnivorous species. Therefore, as a result of the federal government's prohibition of the use of 1080 on federal lands, non-target species are afforded additional protection.

f. It is unlikely that golden eagles will eat enough bait station meat to result in the consumption of an LD_{50} dose. Bald eagles are primarily fish eaters, not scavengers, and none has ever been killed by 1080.

g. All the wolves and grizzly bears in Wyoming are located in Yellowstone National Park and, therefore, will not be exposed to 1080 treated baits.

h. The applicant is not aware of the existence of any black-footed ferrets in Wyoming and assures that no baits will be placed in any area in which these animals are found.

i. 1080 is not an accumulative poison.

2. Regarding hazards to humans.

a. Although no true antidote for 1080 poisoning exists at this time, a substantial number of 1080 poisoning cases have not resulted in death.

b. Almost all human poisoning cases have resulted from the pesticide being in unqualified hands.

c. If 1080 is kept under tight government control and not made available to the general public, accidental exposures will be prevented. The Wyoming Department of Agriculture will take special precautions to prevent such exposure.

3. Regarding the benefits of using 1080 for predator control.

a. 1080 can be used successfully to decrease local populations of coyotes and thereby prevent predation on livestock.

b. Control of predator damage to livestock by using toxic chemicals is necessary.

EVIDENCE RELATING TO RACK OF HAZARD TO NON-TARGET ANIMALS

A. Sources and representations by applicants. The applicants assert that it has never been shown that any population of non-target organisms was ever harmed by the use of 1080 for predator control. In the 1972 Order the Administrator himself noted that it was not clear how various animal populations were affected by the use of 1080. However, he also found that 1080 is highly toxic to all species and that there was evidence indicating that a certain number of non-target animals were being adversely affected by 1080 products. He further observed that the "unattended and unsupervised use of (predator) poisons over large areas of land, by definition, poses a hazard to non-target species." Finally, the Administrator expressed concern that the prairies are populated by numerous animals, including endangered and rare species. Each death of a potentially endangered species represents "an irremediable loss and renders such species closer to extinction." All of these factors raise a substantial question as to the safety of 1080 for predator control. The burden clearly rests with the applicants to present substantial new evidence which demonstrates that populations of non-target animals would not be adversely affected by such use of 1080.

Sources 2, 9, 10, 21, and 37 all provide evidence indicating that 1080 is highly toxic to several non-target predators, thereby substantiating the Administrator's findings in the 1972 Order. Furthermore, all of these sources predate the Order.

Source 36 is a 1948 unpublished report of a study conducted by the Wildlife Research Laboratory evaluating the effects of placing 111 impregnated bait and 34 drop-bait stations in four western states during the winter of 1945–1946. The report documents the lack of selectivity of 1080 baits. Non-target victims included magpies, eagles, badgers, and dogs. While the number of observed non-target kills was small, the report points out that the victims were scattered over very wide areas because 1080 does not kill immediately. As a consequence, a considerable number of the non-target kills may not have been observed. Furthermore, since eagles are rare or endangered birds, even a few losses are significant.

The researchers who conducted the study described in Source 36 also attempted to determine the effect of the 1080-treated baits on the population densities of carrion eating birds by observing the number of birds feeding at the bait stations each day. The author indicates that "eagles maintained fluctuating but sizeable populations in the presence of the stations." The results of the study were described in more detail in Source 25, a 1948 publication. It is apparent from that publication that the number of eagle sightings at the bait stations decreased to a certain degree from winter to spring, and that magpie sightings decreased substantially during the same period. Although these decreases may have resulted in part from migrations, the study does not demonstrate the absence of an impact on the populations of these birds. It should also be noted that Source 25 was considered by the Cain Committee and cited in its report.

Sources 4 and 28 were submitted for the specific purpose of demonstrating that use of 1080 as a predacide should not substantially reduce the populations of non-target animals. The relevant information in Source 4 is found in four affidavits signed by Jack H. Berryman, former Chief of the Division of Wildlife Services of the Bureau of Sport Fisheries and Wildlife, Department of the Interior. The affidavits are dated October 28 and December 6, 1971, and were filed in conjunction with a civil suit against the Department of the Interior challenging its predator control program.

In the affidavits, Mr. Berryman asserted that necessary precautions had been taken to assure that the Bureau's predator control program was not resulting in losses to non-target species. However, other statements made in the affidavits qualify this assertion.

For example, Mr. Berryman stated that occasional bald and golden eagles had been killed incidental to target animals. As indicated by the Administrator in the 1972 Order, any deaths of these rare birds are of great concern. This is particularly true in regard to the bald eagle which has just recently been designed as an endangered species in the applicants' states by the U.S. Department of the Interior. It should also be noted that the Cain Committee consulted Mr. Berryman before reaching its own conclusions (See letter from Mr. Berryman to Congressman Poage in Source 4).

Source 28, a paper which was read before the American Society of Mammalogists in 1952, discusses a study which was designed to determine the effect of 1080 coyote control on local populations of carnivorous mammals. The number of non-target animals caught in coyote traps during the year 1951 was compared to the number caught from 1940–41. 1080 bait stations had been used to kill coyotes during at least some of the intervening years. Traps were set in the same locations during the second period as during the first, and the number of trap-set days were approximately the same for the two periods (more than 16,000). It was assumed that the number of animals caught would be proportionate to the population density of those animals. The author reports that fewer coyotes and more mammals (except for kit foxes) were caught during the second period, thus suggesting that the 1080 bait stations killed coyotes more effectively than non-target species. However, this study suffers from at least two weaknesses. First, considering the large number of trap-set days, the numbers of some of the mammals caught were quite small during both periods. This may in part be due to the fact that the traps were placed in a manner designed to catch coyotes. The small sample sizes make it impossible to draw any definite conclusions about the changes in actual population sizes. Second, only five species, in all, were tabulated (kit foxes, bobcats, skunks, badgers, and raccoons). Many other species may eat meat baits and be more susceptible to 1080 poisoning.

Source 26 is an unpublished 1953 report describing the possible hazards to beneficial mammals and birds posed by the use of 1080 bait stations in mountainous and forested regions in Colorado. This study states that "* * * many carnivores are capable of eating lethal amounts of the station meat and may frequently do so under stress of hunger. Variation in susceptibility to the poison, therefore, is of questionable value in preventing accidental poisonings by the station itself (primary poisoning), but is of considerable importance in limiting so-called secondary poisonings." (p. 3.) Nevertheless, the author indicates that the possibility of a non-target animal eating either the alimentary tracts or the vomitus of a poisoned predator poses some hazard of secondary poisoning.

The applicants submitted Source 6 in order to support the argument that golden eagle would be unlikely to consume a lethal amount of bait station meat. However, the submitted information does not in fact support this conclusion. While the data in Source 6 indicate that golden eagles are not likely to consume an amount of bait containing more than one-half the LD50 dose of 1080, a one-half LD50 dose is a dangerously high dose and may result in a substantial, albeit not 50 percent, death rate. In addition, the actual number of eagles deaths resulting under field conditions may be significantly higher than that observed under laboratory conditions because of the many unknown variables involved: individual eating habits, the effect of activity and air temperature on food consumption (see Source 6, p. 77), availability of alternative food sources, individual suspectibility to 1080, the unevenness of the distribution of 1080 in the bait, the effect of eating several sublethal doses within a short time span, and the inability to survive in the wild after being weakened by a sublethal dose. It should also be noted that while Source 6 states that a golden eagle's daily consumption of food is approximately 6.25 percent to 7 percent of its weight, Source 2 indicates that this bird eats approximately 30 percent of its live weight each day (p. 19). Finally, it has already been demonstrated that several golden eagles have been killed by 1080 (Cain Report, p. 72).

Sources 11 and 25 were also submitted to demonstrate that the use of 1080 for predator control would not pose a threat to golden eagles. Again, these sources do not support the applicants' contention. Both sources were published before the 1972 Order and describe the same study. The results of this study indicate that one of four eagles died from feeding on 1080 treated meat. Therefore, this information suggests that a number of eagles may be adversely affected by the use of 1080 as a predacide. The evidence in Source 11 indicating that non-target organisms refuse to eat 1080 treated baits is sparse and inconclusive, and is contradicted by other sources submitted by the applicants.

The applicants assert that they are unaware of any bald eagle deaths caused by 1080 poisoning. Such an assertion can be given little weight without evidence of organized searches or telemetry studies because of the substantial territorial expanse that can be covered by these birds before 1080 causes death. Furthermore, it has been documented that at least one bald eagle has been killed by 1080 (Cain Report, p. 72). Although Sources 6 and 14 were submitted to demonstrate that bald eagles are primarily fish eaters, both sources indicate that bald eagles do eat meat, especially if located in inland areas. It therefore follows that 1080-treated meat does present a hazard to these birds.

Source 5 describes a 1974 study of 1080-treated bait acceptability to Australian dingoes (wild dogs). An incidental finding of the study was that several crows and hawks were killed when small cubes of fresh meat treated with 1080 were used as bait.

Sources 2, 8, 9, and 26 all contain information relating to the hazard of secondary poisoning (eating a poisoned predator or its vomitus) resulting from the use of 1080-treated meat baits. When considered together, they do not provide convincing evidence that secondary poisoning is not of some concern. Source 9 (the Cain Report) was relied upon by the Administrator to support his findings that 1080 poses secondary poisoning hazards. Source 26 (see discussion above) also indicates that secondary poisoning may be a hazard. On the other hand, Source 2 suggests that eagle deaths resulting from secondary poisoning are unlikely. Although the author indicates that consumption of regurgitated baits before decomposition may present a hazard to these birds (the author calls this primary poisoning), he maintains that the danger is not very great since vomited baits are usually finely divided and therefore subject to quick decomposition. The latter inclusion is subject to question because decomposition would occur slowly during the cold winter months.

In an experiment described in Source 8, an undated submission, vomiting occurred in only a small percentage of dogs fed a single beef or shark meat bait containing a lethal dose of 1080. Although most cats fed 1080-treated beef or shark meat did regurgitate the bait, only one cat ate the vomitus of another. On the basis of these results, the author concludes that few secondary kills from ingestion of regurgitated baits should occur. However, the relevance of this study to actual field conditions and other species is open to question.

The applicants assert that repeated sublethal doses of 1080 do not have an accumulative effect. Source 2 indicates that some species (e.g., golden eagles and rats) exhibit an increased tolerances to 1080 upon receiving repeated doses. However, other species (e.g., dogs and rabbits) die when exposed to multiple sublethal doses. Source 29 confirms the accumulative effect on rabbits. While the applicants have

documented their assertions for some species, it should be noted that they have not presented any evidence to indicate that those animals which do develop a tolerance to 1080 would not be adversely affected by multiple sublethal exposures to the chemical or have reduces chances of survival in the wild as a result of such exposures.

B. Restrictions and methods of application. The guidelines (Source 1) of the American Society for Testing and Materials (ASTM) provide directions for the use of 1080 as a predacide and are intended by the applicants to be considered as part of the label for their products. EPA has concluded that the methods of use recommended in these guidelines do not differ substantially from the methods employed at the time of the 1972 Order and that the risks to non-target animals discussed by the Administrator in his decision would still be present if these guidelines were followed.

Use of bait stations consisting of large meat baits impregnated with 1080 was the standard method of use at the time of the 1972 Order. In addition, the specified concentration of 1080 in the meat baits (1.6 gm of 1080 per 100 lbs. of meat) is the same in both the ASTM guidelines and the guidelines which had been established by the Bureau of Sport Fisheries and Wildlife before the Order (see Memorandum to Regional Directors from the Director of the Bureau of Sport Fisheries and Wildlife, March 11, 1970, hereinafter referred to as Memorandum 1, and Memorandum to personnel of the Division of Wildlife Services from Acting Director of Region 2, August 25, 1970, hereinafter referred to as Memorandum 2). The ASTM guidelines and the guidelines specified in Memoranda 1 and 2 provide similar instructions in regard to fastening of baits to prevent removal, time of placement (from late fall to early spring), and retrieval and destruction of bait stations at the end of the baiting season. The ASTM guidelines state that coyote numbers can ordinarliy be effectively reduced by placement of bait stations on the average of one per 36 square miles.

The guidelines also indicate that more frequent placement may be required. Therefore, no ceiling on the density of bait stations has been proposed in the applications. On the other hand, Region 2 of the Division of Wildlife Services did restrict the density of bait stations to two per 36 square miles. (See Memorandum 2.) Yet, in reaching his 1972 decision, the Administrator apparently did not deem this restriction adequate to protect nontarget animals.

It does not appear that use of small single dose baits containing 1080 was a common practice prior to the 1972 EPA Order. The guidelines of the Bureau of Sport Fisheries and Wildlife only permitted the use of large baits. However, use of single dose baits as proposed by the ASTM guidelines appears to pose the same general hazards. The concentration of 1080 to be used in the single dose is considerably higher than that in the large bait. Furthermore, a large number of single dose baits (from ten to thirty) are to be placed at each station site in relatively close proximity. This pattern of placement makes possible the consumption of several baits by a single animal. It therefore follows that the danger of primary or secondary poisoning of non-target animals is at least equal to that posed by the use of a single large bait, and the applicants have presented no substantial evidence to indicate otherwise. Although the recommendation in the ASTM guidelines that single dose baits be covered with small flat stones or cowchips would appear to reduce the hazard to scavenging birds, no field studies were conducted to verify this conclusion.

The applicants assert that the relatively thin distribution of bait stations provides adequate protection to all non-target mammal populations since the coyote is the only mammalian scavenger in the West which commonly ranges over such a wide area. However, insufficient data were submitted to support this claim. Source 27 indicates that weasels, female minks, and gray and kit foxes do not have a very extensive range. However, the same source indicates that martens, red foxes, and male minks do range over a considerable amount of territory. Even more important, no information at all was submitted describing the range of the numerous other mammalian and non-mammalian carnivores in the West. Eagles and other carrion-feeding birds are one obvious example of scavengers which do commonly range over large areas. Finally, the applicants' claim is inconsistent with the proposed uses in the application. On the one hand, the applicants wish to use 1080 to reduce populations of the coyote, red fox, and other canids, and on the other they claim that 1080 will have no significant effect on animals other than the coyote.

The applications propose that 1080 be placed in a restricted use category and be used only by certified applicators. However, the applicants have not submitted sufficient information to EPA to indicate how a certified applicator could be trained so as to avoid adverse effects on non-target animals.

Source 26, which was submitted to demonstrate that proper placement of 1080 baits would reduce the hazard of primary poisoning of certain nontarget carnivores, suggests the following restrictions:

1. Martens: place 1080 bait stations well removed from cover and timber.
2. Weasels: no restriction needed if coyote stations are properly located and spaced.
3. Minks: do not place 1080 bait station within one quarter mile of open or mink-inhabited waters.
4. Red foxes: adequate protection not possible in many localities because the habits are so close to those of coyotes.
5. Bears: place 1080 bait stations where bears do not range or remove stations before the animals emerge from hibernation.

The author indicates that the data substantiating the efficacy of these restrictions in reducing the hazard to non-target species are incomplete. In particular, he states that the proposed suggestions for precautions to be taken "are based more on theory than on field trials." (p. 6.) It should also be noted that Source 26 makes recommendations for the protection of only five of the many species which inhabit the areas in which 1080 is proposed to be used.

The ASTM guidelines recommend that 1080 stations not be employed in the occupied ranges of the Northern kit fox, the red wolf, and the Northern Rocky Mountain wolf, all endangered species. However, careful placement of baits may not reduce the hazard to certain other rare species because of their very extensive range. Bald and golden eagles are prime examples. Furthermore, as noted above, the protection afforded carrion-eating birds by covering single dose lard baits with cowchips or stones has not been substantiated by field studies. In any event, this practice would not avert the problem of secondary poisoning and cannot be applied to large meat baits.

The applicants have asserted that former Administrator Train made two statements suggesting that he endorse the ASTM guidelines and that he believed that adverse environmental effects had not resulted from professional use of chemical predacides. Source 32 was submitted to support this claim. It should be noted that this source does not contain any such statements by Administrator Train. The statements cited by the applicants appear in a very lengthy appendix which was prepared with the aid of private consultants to EPA and which accompanied proposed pesticides registration guidelines. Since the proposed guidelines were never promulgated, the statements should not be considered to have been representative at any time of EPA's position on predator control. This conclusion is also warranted by the fact that these statements are irrelevant to the purpose of that subpart of the appendix in which they appear, i.e., the appraisement of current methodology for evaluating the efficacy of vertebrate control agents. Furthermore, while one of the statements cited indicated that field studies and the ASTM standards,

which were under development at the time the statement was made, might provide adequate guidelines for protection of the environment, no definite conclusion was reached.

The applicants also maintained that National Parks and Forests are the primary habitat of non-target carnivorous species. Therefore, since use of 1080 on federal lands is prohibited, these animals will be protected. However, the applicants have submitted no evidence demonstrating that non-target carnivores and omnivores ranging on federal lands do not enter non-federal lands where 1080 would be used. Furthermore, in his 1972 decision, the Administrator indicated that numerous animals inhabit the prairies and ranges much of which is not federal land.

EVIDENCE RELATING TO HAZARDS TO HUMANS

A. Lack of effective antidote. The State of Wyoming (and presumably the States of Colorado and South Dakota) concede that no true antidote for 1080 poisoning exists at the present time and several of the submitted items support this fact. (See Sources 10, 13, 21, 34, and 36.) Two letters were provided which suggest that acetamide glucose is a possible antidote for 1080 poisoning (Source 20). However, the letters provide only scanty information as to the effectiveness of this treatment and do not provide a discussion of case histories. Furthermore, there is no evidence that the treatment is readily available in the United States. Source 38 recommends monoacetin for treatment of 1080 poisoning. However, several other sources submitted by the applicants indicate that this therapy is not very effective.

The applicants state that 1080 poisoning is not always fatal and that symptomatic treatment is sometimes effective. Source 21 indicates that the estimated LD50 for man is 2–10 mg/kg. This is not necessarily inconsistent with the Administrator's finding that "the dangerous dose for man is 0.5–2 mg/kg", and the conclusion that 1080 is highly toxic to man is not subject to question. Sources 21 and 35 do document several recoveries from 1080 poisoning. However, details as to the degree of exposure are sparse. Furthermore, approximately half of the cases of exposure to 1080 which are documented in the submitted sources resulted in death.

B. Human exposure to 1080. The crucial question is whether accidental exposure to 1080 is a reasonable possibility in light of the restrictions on use proposed in the applications for registration. The applicants assert that only one case of applicator exposure has been documented. Source 21 describes a non-fatal incident in which the applicator was poisoned when the wind blew 1080 into his face. Whether other cases of applicator exposure have occurred is not clear. However, the ASTM guidelines do appear to minimize the possibility of exposure to 1080 before it is injected into the baits. As a restricted use pesticide, only certified applicators would be permitted to use 1080 as a predacide. 1080 concentrate would be kept in a locked storage area when not being handled. Other safety precautions are provided to avoid applicator exposures or handling by unauthorized individuals. It should also be noted that the proposed guidelines permit placement of 1080-treated baits no closer than one mile of residences and require the identification of these baits by warning signs. Under these conditions, the possibility of harmful human contact with the baits appears remote.

Although the probability of human harm resulting from the use of 1080 as a predacide appears small, this preliminary assessment, standing alone, does not warrant reconsideration of the 1972 Order. The hazard to non-target species and the lack of proven substantial benefits were major factors in the Administrator's decision. As indicated elsewhere in this notice, the applicant has not submitted substantial new evidence which might warrant modification of the 1972 findings on these matters.

EVIDENCE RELATING TO THE BENEFITS OF USING 1080 AS A PREDACIDE

A. Reduction of sheep losses. While the demonstration of inexactly quantified benefits was sufficient to warrant registration of the M–44, much more substantial data relating to benefits are required in the case at hand because 1080 has not been shown to be as selective as the M–44 in killing only target predators. In light of the findings of the 1972 and 1975 EPA Orders, the applicants must not only provide substantial new evidence which demonstrates clearly defined benefits to be derived from the use of 1080, but also show that these benefits are sufficiently greater than those derived from the use of the M–44 and the other more selective methods of predator control to justify the greater risks posed by 1080.

Although some of the submitted sources indicate that 1080 baits do kill coyotes and may result in some reduction of predatory sheep losses, these sources do not eliminate the uncertainty as to the extent of this reduction. Furthermore, no substantial new evidence was presented which indicates that the more selective methods of predator control are less efficacious in reducing sheep losses than 1080 or otherwise less desirable.

Source 39, a 1977 publication, reviews seven studies (conducted in 1972 or later) in which the cause of sheep losses on 27 ranches was determined by trained biologists who performed necropsies on sheep carcasses. Unspecified methods of predator control were used on twenty-five of the ranches, and no controls were used on the remaining two ranches. The review reports that the percentage of lambs killed by predators was considerably higher on the two ranches which did not employ predator controls. However, it is not possible to draw any conclusions about the effectiveness of 1080 from these results since there is no indication that 1080 baits were used in the studies.

Source 39 presents additional data indicating the total sheep and lamb losses in fifteen western states from 1956 to 1975 without a breakdown as to cause. Wyoming, Colorado, South Dakota, and eleven other states reported an increased percentage of lamb losses after the 1972 Executive Order and 1972 EPA Order. However, in almost all of these states (including those of all three applicants) the trend toward increased losses began in the late 1950's when 1080 was widely available, with sharp fluctuations from year to year. Furthermore, the percentage of adult sheep losses actually decreased in South Dakota and remained stable in Colorado after 1972.

A breakdown as to cause of sheep and lamb losses from 1966 to 1975 was made for six states, including Wyoming, Colorado, and South Dakota. Although the highest rates of losses reported to be due to predation occurred after 1972, the increase over losses immediately prior to the Order was not substantial.

The percentage of predatory sheep losses in National forest rangelands also increased after 1972. However, the trend began in the late 1950's.

The authors of Source 39 point to several factors for an explanation of the increase in predation rate over the past twenty years. these include decreased expenditures and effort on the part of the Department of the Interior to control predators after 1964, changes in management practices on the part of ranchers, and general declines in the numbers of sheep and lambs raised resulting in a smaller sheep to coyote ratio. According to the authors, statistical analysis of their historical data suggests that while coyote control programs reduce sheep and lamb losses, "the effect is not dramatic and considerable variation remains unexplained." (p. 30.) They conclude that "better data are needed if some of the relationships among predation losses, coyote population numbers, control efforts, and ranching practices are to be more completely defined."

The study described in Sources 25 and 36 attempted to evaluate the efficacy of 1080 in killing coyotes and re-

ducing the loss of sheep predators. This study, which as indicated above was considered by the Cain Committee, involved the placing of forty-five bait stations consisting of 1080 impregnated carcasses over a 1600 square mile area in Colorado in the winter of 1944–45. On the basis of the number of coyotes feeding at the stations during the curse of the winter, it was estimated that 299 to 394 coyotes had been killed by the 1080-treated bait even though only 70 coyote carcasses had been found. Apparently, two professional hunters, using primarily coyote-getters, had killed 546 coyotes and bobcats in the same general area during the period beginning with the previous spring and continuing until the end of the experiment. Nine sheepmen in the Colorado area reported that loss of lambs to predators declined from 3.6 percent during the lambing season just prior to the use of the 1080 bait stations to 0.5 percent during the season following treatment of their ranches.

This study does not make the required demonstration of well-defined benefits for several reasons. First, the report does not indicate precisely how the number of coyotes killed was estimated. Second, it is difficult to determine the cause of sheep losses and the percentage of such losses due to predation without expert biological assessments of the carcasses. Third, while the study claims that the ranchers surveyed were representative, it does not say what they were representative of or how they were selected. This information is especially necessary for purposes of determining the significance of the results when the sample size is as small as was the case in this study. Finally, the report states that control of coyotes with 1080 bait stations was not effective in areas where foods were abundant, and follow-up work by hunters using other methods of predator control was necessary. The implication of this statement is that alternative methods may be more effective than the use of 1080 in such areas.

The protocol of the study described in Source 28 is discussed above. In addition to tabulating the number of nontarget animals trapped, the researchers counted the number of coyotes caught for purposes of estimating the change in coyote density over the ten year interval between the first trapping period and the second. Considerably fewer coyotes were caught during the second period than the first. However, no trapping of coyotes was done in control areas where 1080 baits were not used. As a consequence, no conclusive evidence can be derived from this study that factors other than the use of 1080 were not responsible for the apparent reduction in coyote density. More importantly, this study did not address the efficacy of 1080 bait stations in reducing sheep losses.

The applicants have submitted no evidence directly relating to the effectiveness of single dose 1080 baits in reducing sheep losses. Source 36 describes a study which attempted to determine the effectiveness of small drop-baits consisting of lard impregnated with 1080 or containing 1080 tablets in reducing coyote populations. The author reports that the number of coyotes observed at the thirty-four drop-bait stations employed in the study decreased after time. However, it is impossible to determine the extent of population reduction from this study. Furthermore, the author concludes that the use of 1080 drop baits is less valuable as a means of coyote control than the use of large impregnated baits.

While none of the submitted evidence refutes the Administrator's finding that effective and more selective alternatives to the use of 1080 exist for purposes of reducing predatory sheep losses, one submission actually supports this finding. In the letter (Source 4) to Congressman Poage mentioned above, Jack Berryman discusses a study conducted in the summer of 1973 by the Bureau of Sport Fisheries and Wildlife to evaluate the effectiveness of the use of traps, calling, denning, and airplane hunting to attain predator control. Berryman indicates that these methods were used with a high degree of success over extensive areas of the West. However, he provides no detailed information on this matter.

B. Control of rabies and other epizootic diseases in wild canids. The applicants have not submitted any evidence indicating the prevalence of rabies and other epizootic diseases carried by wild canids in their respective states nor the human hazard involved. Assuming such diseases are a recurrent problem, no information was submitted to indicate precisely how 1080 would be used to control wildlife vectors or the effectiveness of using 1080-treated baits in achieving control. Even more important, the applicants have not given any indication why more selective means of predator control, such as shooting or use of the M-44, would not suffice.

C. Reduction of damage to crops. Although the applicants propose to use 1080 to suppress local populations of wild canids that may cause economic damage to crops, no evidence was submitted which indicates that wild canids do in fact cause such damage.

Other Submissions. The applicant submitted Sources 7, 12, 15, 16, 17, 18, 19, 22, 23, 24, 30, 31, and 33 in order to satisfy the registration regulations requiring the submission of data relating to environmental chemistry, metabolism, and other characteristics of the pesticide whose registration is sought. None of these sources pertains directly to the findings of the 1972 Order.

Dated: March 28, 1978.

EDWIN L. JOHNSON,
Deputy Assistant Administrator.
for Pesticide Programs.

APPENDIX OF SOURCES OF INFORMATION SUBMITTED BY APPLICANT

1. ASTM Predator Task Group. 1976. New Standard Guideline for the Use and Development of Sodium Monofluoroacetate (Compound 1080) as a Predacide, 37 pp.

2. Atzert, S. P. 1971. A Review of Sodium Monofluoroacetate (Compound 1080). Its Properties, Toxicology, and Use in Predator Control. USDI Special Scientific Report—Wildlife No. 146, 34 pp.

3. Beck, J. R. 1975. An Overview of ASTM's Activities in Establishing Standards for Vertebrate Pest Control Materials. Speech given at Predator Control Conference.

4. Berryman, J. November 1, 1973. Letter to Congressman W. R. Poage, Chairman, Committee on Agriculture, U.S. House of Representatives, with attached affidavits.

5. Best, L. W., L. K. Corbett, D. R. Stephens, and A. E. Newsome. 1974. Baiting Trials for Dingoes in Central Australia with Poison '1080'. Encapsulated Strychnine, and Strychnine Suspended in Methyl Cellulose. CSIRO Austral. Div. Wildl. Res. Tech. Paper No. 30: 1–7.

6. Brown, L., and D. Amadon. 1968. Eagles, Hawks and Falcons of the World. Vol. 1. McGraw-Hill Book Co. pp. 76–82, 289–291.

7. Buffa, P., V. Guarriero-Bobyleva, and R. Costa-Tiozzo. 1973. Metabolic Effects of Fluoroacetate Poisoning in Animals. Fluoride Quarterly Reports 6(4): 224–247.

8. Bureau of Sport Fisheries and Wildlife. No date. Sodium Monofluoroacetate (1080) Baits Trials. Unpublished Bureau Data, 9 pp.

9. Cain, S. A., Chairman, Advisory Committee on Predator Control. 1972. Predator Control—1971, 207 pp.

10. Chenowerth, M. B. 1949. Monofluoracetate Acid and Related Compounds. J. Pharmacol Exptl. Therap. II 97: 383–423.

11. Dana, R. H. 1971. Vertebrate Pest Control in California. California Dep. of Agriculture, 27 pp.

12. David, W. A., and B. O. C. Gardiner. 1966. Persistence of Fluoroacetamide in Soil. Nature 209(5030): 1367–1368.

13. Egyed, M. N. 1973. Clinical, Pathological, Diagnostic and Therapeutic Aspects of Fluoroacetate Research in Animals. Fluoride Quarterly Reports 6(4): 215–224.

14. Evanson, R. M. 1967. Predator Control and the Sheep-Raising Industry. Doctoral Thesis, pp. 88–90, unpublished.

15. Goldman, P. 1965. The Enzymatic Clevage of the Carbon-Fluorine Bond in Fluoroacetate. J. Biol. Chem. 240(8): 3434–3438.

16. Hilton, H. W., Q. H. Yuen, and N. S. Nomura. 1969. Absorption of Monofluoroacetate-2-^{14}C Ion and Its Translocation in Sugarcane. Agricultural and Food Chemistry 17(1): 131–134.

17. Kelly, M. 1965. Isolation of Bacteria able to metabolize Fluoroacetate or Fluoroacetamide. Nature 208(5012): 809–810.

18. Lovelace, J., G. W. Miller, and G. W. Welkie. 1968. The Accumulation of Fluoroacetate and Fluorocitrate in Forage Crops Collected near a Phosphate Plant, pp. 187–

190. In Atmospheric Environment, Pergamon Press.
19. Miller, G. W., M. H. Yu, and M. Psenak. 1973. Presence of Fluoroorganic Compounds in Higher Plants. Fluoride Quarterly Reports 6(4): 203-215.
20. New Zealand Letters (3). 1974, 1975. Information of 1080 Antidotes.
21. Pattison, F. L. M. 1959. Toxic Aliphatic Fluorine Compounds. Elsevier Publishing Co., Amsterdam, 227 pp.
22. Peters, J. A. 1975. Contamination of Forest Ecosystems by Sodium Fluoroacetate. Proc. New Zealand Ecol. Soc., in press.
23. Peters, R. and M. Shorthouse. 1964. Fluoride Metabolism in Plants. Nature 202: 21(4927): 21-22.
24. Peterson, J. E. 1975. A Gas Chromatographic Method for Sodium Fluoroacetate (Compound 1080) in Biological Materials. Bul. Environmental Contamination and Toxicology 13(6): 751-757 and attached handwritten protocol.
25. Robinson, W. B. 1948. Thallium and Compound 1080 Impregnated Stations in Coyote Control. J. Wildlife Management 12(3): 279-295.
26. Robinson, W. B. 1953. Compound 1080 Stations in Forested and Mountainous Regions. Bureau of Sport Fisheries and Wildlife Files, Unpublished Report, 25 pp.
27. Robinson, W. B. 1963. Coyote Control with Compound 1080 Stations in National Forests. Bureau of Sport Fisheries and Wildlife Files, Unpublished Report, 19 pp.
28. Robinson, W. B. 1952. Population Trends of Predators and Fur Animals in 1080 Station Areas. Paper read before the American Society of Mammalogists in Charleston, S.C.
29. Rowley, I. 1963. The Effect on Rabbits of Repeated Sublethal Doses of Sodium Fluoroacetate. CSIRO Wildl. Res. 8: 52-55.
30. Sawyer, R., L. M. Grisley, and B. G. Cox. 1967. Separation, Identification and Determination of Fluoroacetamide Residues in Water, Biological Materials and Soils. J. Sci. Fd. Agric. 18: 283-286.
31. Tonomura, K., F. Futai, O. Tanabe, and T. Yamaoka. 1965. Defluorination of Monofluoroacetate Bacteria. Part I. 29(2): 124-128.
32. Train, R. E. 1975. Guidelines for Registering Pesticides in United States. Fed. Reg. 40(123): 26873—26874.
33. Ward, P. F. V., and N. S. Huskisson. 1969. The Metabolism of Fluoroacetate by Plants. Proc. Biochemical Soc. No. Vol. No., p. 9.
34. Wells, W. A., and J. Wood. September 20, 1973. A Review of Sodium Monofluoroacetate (Compound 1080) Its Properties and Use. EPA Memo to J. B. Ritch, Acting Director, Registration Director.
35. West, G. A. April 23, 1959. General Correspondence concerning theft of 1080 baits with attached February 15, 1959 Report. Dep. of Recreation and Conservation. Fish and Game Branch. Vancouver, B.C.
36. Anon. 1948. Sodium Fluoroacetate (Compound 1080) as a Toxic Agent in Coyote Control. Wildlife Research Laboratory Files, Denver, Colo. Unpublished Report, 8 pp.
37. Anon. 1946. No title. Wildlife Research Laboratory Files, Denver, Colo., Unpublished Notes, 6 pp.
38. Anon. 1976. An Abtract (76-0094) In Epidemiology, Prevention and Treatment of article by Reigart, J. R., J. L. Brueggeman, and J. E. Keil. 1975. Sodium Fluoroacetate Poisoning. Am. J. Dis. Child. 129(10): 1224-1226.
39. Gee, C. K., R. S. Magleby, W. R. Bailey, R. L. Gum, and L. M. Arthur. 1977. Sheep and Lamb Losses to Predators and Other Causes in the Western United States. USDA ERS Agricultural Economic Report No. 369: 1-41.
40. Gee, C. K. 1974. Enterprise Budgets for Western Commercial Sheep Businesses, 1974. USDA ERS-659, 111 pp.

[FR Doc. 78-8836 Filed 4-3-78; 8:45 am]

[6560-01]

[OPP-42044A; FRL 877-4]

RHODE ISLAND

State Plan for Certification of Commercial and Private Applicators of Restricted Use Pesticides; Approval Status

Section 4(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 7 U.S.C. 136 et seq.), and the implementing regulations in 40 CFR part 171, require each state desiring to certify applicators to submit a plan for its certification program for approval by the Environmental Protection Agency (EPA).

On March 1, 1977, notice was published in the FEDERAL REGISTER (42 FR 11864) of the intent of the Regional Administrator, EPA, Region I to approve, on a contingency basis, the Rhode Island Plan for Certification of Commercial and Private Applicators of Restricted Use Pesticides (Rhode Island Plan). Contingent approval was requested by the State of Rhode Island pending promulgation of additional implementing regulations necessary to permit Rhode Island to carry out FIFRA responsibilities.

Complete copies of the Rhode Island State Plan (except for sample examinations) were made available for public inspection at the following locations: Rhode Island Department of Natural Resources, Providence, R.I.; EPA, Region I, Boston, Mass.; and EPA, Federal Register Section, Technical Services Division, Office of Pesticide Programs, Washington, D.C.

No comments were received on the State Plan during the 30-day comment period.

Subsequent to publication of the Notice of Intent to Approve the Rhode Island State Plan, the Rhode Island Department of Environmental Management (previously named the Department of Natural Resources) promulgated amendments effective on March 7, 1978, to the regulations for Control of Pesticides to fulfill all requisite legal authorities. Having reviewed these regulations, EPA has determined that the Rhode Island State Plan satisfies the requirements of section 4(a)(2) of the amended FIFRA and 40 CFR 171.

In view of the revision to the regulations, EPA believes it would not serve any useful purpose to proceed with approval of the Rhode Island State Plan on a contingency basis, but rather believes it should proceed directly with action toward final approval and hereby provides public notice of such action. Accordingly, the Rhode Island State Plan is approved.

The Rhode Island State Plan will remain available for public inspection in the Department of Environmental Management, Division of Agriculture, 83 Park Street, Providence, R.I. 02903.

Effective date: Pursuant to section 4(d) of the Administrative Procedure Act, 5 U.S.C. 553(d), the Agency finds that there is good cause for providing that the approval granted herein to the Rhode Island State Plan shall be effective upon signature of this notice. Neither the Rhode Island State Plan itself nor this Agency's approval of the Plan creates any direct or immediate obligation on pesticide applicators or other persons in the State of Rhode Island. Delays in starting the work necessary to implement the Plan, such as may be occasioned by providing some later effective date for this approval, are inconsistent with the public interest. Accordingly, this approval shall become effective immediately.

Dated: March 21, 1978.

WILLIAM R. ADAMS, JR.,
Regional Administrator,
Region I.

[FR Doc. 78-8884 Filed 4-3-78; 8:45 am]

[6210-01]

FEDERAL RESERVE SYSTEM

BANCO NACIONAL DE MEXICO, S.A., BANAMEX HOLDING CO., AMMEX HOLDING CO.

Formation of Bank Holding Company

Banco Nacional de Mexico, S.A., Mexico City, Mexico, its direct subsidiary, Banamex Holding Co., Los Angeles, Calif., and its indirect subsidiary, Ammex Holding Co., Los Angeles, Calif. each have applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become bank holding companies by acquiring 80 per cent or more of the voting shares of Community Bank of San Jose, San Jose, Calif. The factors that are considered in acting on the applications are set forth in 3(c) the Act (12 US.C. 1842(c)).

The applications may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of San Francisco. Any person wishing to comment on the applications should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than April 24, 1978.

Board of Governors of the Federal Reserve System, March 28, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 78-8759 Filed 4-3-78; 8:45 am]

[6210-01]

DSB CORP.

Formation of Bank Holding Company

DSB Corp., Deerfield, Ill., has applied for the Board's approval under section 3(a)(1) of the Bank holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 100 percent of the voting shares (less directors' qualifying shares) of Deerfield State Bank, Deerfield, Ill. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the board of Governors of at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than April 25, 1978.

Board of Governors of the Federal Reserve System, March 28, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 78-8760 Filed 4-3-78 8:45 am]

[6210-01]

OVERLAND PARK BANCSHARES, INC.

Formation of Bank Holding Company

Overland Park Bancshares, Inc., Overland Park, Kans., has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 90 percent or more (less directors' qualifying shares) of the voting shares of The Overland Park State Bank and Trust Company, Overland Park, Kans. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than April 25, 1978.

Board of Governors of the Federal Reserve System, March 28, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 78-8761 Filed 4-3-78; 8:45 am]

[6210-01]

REPUBLIC OF TEXAS CORP.

Acquisition of Bank

Republic of Texas Corporation, Dallas, Tex., has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3) to acquire 100 per cent (less directors' qualifying shares) of the voting shares of Bexar County National Bank of San Antonio, San Antonio, Tex. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than April 24, 1978.

Board of Governors of the Federal Reserve System, March 28, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 78-8762 Filed 4-3-78; 8:45 am]

[6210-01]

SAN AUGUSTINE BANCSHARES, INC.

Formation of Bank Holding Company

San Augustine Bancshares, Inc., San Augustine, Tex., has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1) to become a bank holding company by acquiring 80 per cent or more of the voting shares (less directors' qualifying shares) of Commercial State Bank, San Augustine, Tex. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than April 27, 1978.

Board of Governors of the Federal Reserve System, March 28, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 78-8763 Filed 4-3-78; 8:45 am]

[6210-01]

TUSCUMBIA BANCSHARES, INC.

Formation of Bank Holding Company

Tuscumbia Bancshares, Kansas City, Mo., has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 99 per cent or more of the voting shares of Bank of Tuscumbia, Tuscumbia, Mo. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of St. Louis. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than April 24, 1978.

Board of Governors of the Federal Reserve System, March 28, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 78-8764 Filed 4-3-78; 8:45 am]

[6210-01]

U.S. TRUST CORP.

Formation of Bank Holding Company

U.S. Trust Corporation, New York, N.Y., has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 100 per cent of the voting shares of United States Trust Co. of New York, New York, N.Y. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of New York. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than April 25, 1978.

Board of Governors of the Federal Reserve System, March 28, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 78-8765 Filed 4-3-78; 8:45 am]

[6820-24]

GENERAL SERVICES ADMINISTRATION

[Federal Procurement Regs.; Temporary Reg. 44]

REGULATIONS CHANGES BY THE COST ACCOUNTING STANDARDS BOARD (CASB)

1. *Purpose.* This FPR temporary regulation implements the regulations changes by the CASB (42 FR 45625, September 12, 1977) which are effective March 10, 1978, with respect to national defense contracts of civilian

executive agencies. The regulation also implements CASB regulations (42 FR 54254, October 5, 1977) regarding materiality.

2. *Effective date.* This regulation is effective March 10, 1978.

3. *Expiration date.* This regulation expires on March 10. 1979.

4. *Background.* a. The Cost Accounting Standards Board (CASB) has issued regulations effective March 10, 1978, which revise CASB requirements regarding applicability of cost accounting standards to negotiated national defense contracts.

b. The CASB action made it necessary to extensively revise the implementing procedures in the Armed Services Procurement Regulation (ASPR).

c. Subpart 1-3.12 of the FPR provides for application of CASB regulations and standards to national defense contracts awarded by civilian executive agencies. In addition it extends, with certain exceptions, the application of CASB regulations and standards to negotiated nondefense contracts, to the extent practicable, in the interest of uniformity.

d. Since the FPR addresses defense contracts awarded by civilian agencies, this amendment revises provisions applicable to defense contracts uniformly with the referenced ASPR changes.

e. The CASB changes, in effect, focus the applicability of cost accounting standards on large defense contractors. These are the contractors of primary concern as evidenced by the legislative history of Pub. L. 91-379 which established the CASB. This focus is accomplished by exempting all small business concerns, as defined by governing regulations of the Small Business Administration, and by providing modified coverage for those large contractors who perform relatively small amounts of government defense work, generally under $10 million and 10 percent of a business unit's sales on an annual basis.

f. Consistent with the current treatment of cost accounting standards in the FPR, the applicability of the CASB changes are extended to negotiated nondefense contracts.

g. The Administrator of Federal Procurement Policy has directed that the CASB regulations be applied to negotiated nondefense contracts without further exemption. It should be noted that the provisions of the proposed FPR amendment submitted for review to the Interagency Procurement Policy committee by letter dated December 21, 1977, were at variance from this direction.

h. In the interest of providing a maximum opportunity for an expression of views, paragraph 7 invites comments from interested parties.

5. *Explanation of changes.* a. Section 1-3.1202 is amended to add clarifying statements to "company" and "contractor" definitions and to add definitions for relevant Federal agency, defense contractor, defense subcontractor, National defense, small business concern, CAS covered contract, and negotiated subcontract.

b. Section 1-3.1201-1 is revised to incorporate materiality provisions which were recently promulgated by the CASB.

c. Section 1-3.1203 is revised to treat cost accounting standard requirements under three subsections, as follows:

(1) Prime contractor disclosure statement requirements for defense contractors are contained in § 1-3.1203-1.

(2) Applicability of cost accounting standards is covered in § 1-3.1203-2. The provisions are contained in three paragraphs pertaining to (i) small business concerns, (ii) national defense contracts with other than small business concerns, and (iii) nondefense contracts with other than small business concerns.

(3) Solicitation notices are covered in § 1-3.1203-3. Notices pertaining to national defense contracts are set forth in paragraph (a). Paragraph (b) contains a single solicitation notice for use in nondefense procurements.

d. Section 1-3.1203-1 contains provisions regarding the submission of disclosure statements by defense contractors. Paragraph (a) indicates CASB Disclosure Statement requirements do not apply to nondefense awards. Paragraph (b) summarizes the requirements. The remaining paragraphs parallel ASPR provisions.

e. Section 1-3.1203-2 contains applicability requirements. Paragraph (a) provides that all small business concerns are exempt. Paragraph (b) summarizes the provisions of the CASB, including the new modified contract coverage provisions. Paragraph (c) sets forth changed requirements for nondefense contracts. The changes extend full contract coverage to nondefense awards with a contractor business unit that (1) is currently performing a negotiated national defense contract or subcontract that contains a CASB required Cost Accounting Standards clause (4 CFR 331), and (2) is currently required to accept that clause in any new negotiated national defense contracts it receives. Negotiated nondefense awards to large business concerns are subject to modified contract coverage; i.e., CAS 401 and CAS 402, when the foregoing criteria do not apply.

f. Section 1-3.1203-3 contains solicitation notices. Paragraph (a) addresses national defense solicitations. The notice entitled "Disclosure Statement—Cost Accounting Practices and Certification" is modified to parallel ASPR changes. The notices entitled "Cost Accounting Standards Exemption for Contracts of $500,000 or Less" and "Additional Cost Accounting Standards Applicable to Existing Contracts" remain essentially unchanged except for the deletion of FPR references. A fourth notice paralleling ASPR entitled "Cost Accounting Standards—Eligibility for Modified Contract Coverage" is added. Paragraph (b) addresses nondefense solicitations. A single solicitation notice is provided.

g. Section 1-3.1204 is revised to set forth the requirement for use of contract clauses. Paragraph (a) provides the requirements for national defense procurements consistent with the ASPR. Paragraph (b) provides the nondefense procurement requirements.

h. Section 1-3.1204-1 is amended as follows:

(1) The section caption is changed to indicate the limited application of the clauses contained therein to national defense contracts.

(2) Paragraph (a)(1) incorporates an amended Cost Accounting Standards clause. The clause is modified by making deletions in paragraphs (a) and (d)(2) of the clause and by adding a new Note (3) after paragraph (d) of the clause.

(3) Paragraph (a)(2) incorporates a new clause entitled Disclosure and Consistency of Cost Accounting Standards pursuant to 4 CFR 332. Consistent with ASPR provisions, two Notes (in lieu of a reference) are added following paragraph (a)(2) of the clause, a revised reference is cited in paragraph (d)(1) of the clause, and a Note is added following paragraph (d)(3) of the clause.

(4) Paragraph (b) incorporates a revised Administration of Cost Accounting Standards clause, consistent with ASPR provisions.

i. Section 1-3.1204-2 is revised as follows:

(1) The section caption is changed to indicate the limited application of the clauses contained therein to nondefense contracts.

(2) Paragraph (a) incorporates a new contract clause which will be used when full CAS coverage for the nondefense award is applicable.

(3) Paragraph (b) incorporates a new contract clause which will be used when modified CAS coverage for a nondefense award is applicable.

(4) Paragraph (c) makes a cross-reference to use of the national defense Administration of Cost Accounting Standards clause in nondefense awards.

j. Section 1-3.1204-3 is added on a consistent basis with the ASPR.

k. Section 1-3.1205 is amended by adding a sentence to paragraph (a) which restates the exclusion of a nondefense disclosure statement submission requirement.

l. Section 1-3.1206 is revised by changing the section caption and text on a consistent basis with the ASPR.

m. Section 1-3.1207 is amended by changing paragraphs (a), (b), and (c) on a consistent basis with the ASPR.

n. Section 1-3.1208 is amended by changing paragraph (b) and adding a new paragraph (c) to clarify CAS administration responsibilities when not performed by DOD components.

o. Section 1-3.1210 is amended by changing paragraphs (b) and (c) on a consistent basis with the ASPR except for the addition of nondefense award reporting.

p. Section 1-3.1211 is revised to allow waiver authority for agencies at levels consistent with the Department of Defense.

q. Section 1-3.1212 is amended by changing paragraphs (c)(2), (d), and (h)(2) to correct references.

r. Section 1-3.1213 is amended by changing paragraphs (a), (b), (c)(1), and (e)(1) to correct references.

s. Section 1-3.1214 is amended by changing all paragraphs except (d)(2) to correct references.

t. Section 1-3.1219 is revised for purposes of clarification.

u. Sections 1-7.103-27, 1-7.203-23, 1-7.303-55, 1-7.403-50, 1-7.603-27, and 1-7.703-22 are revised to correct references.

6. *Effect on other issuances.* The following changes are made in the FPR.

a. Section 1-3.1202 is amended by revising paragraphs (b) and (c) and adding paragraphs (d), (e), (f), and (g) as follows:

§ 1-3.1202 *Definitions.*

* * * * *

(b) "Company" includes all divisions, subsidiaries, and affiliates of the contractor under common control. (The monetary threshold requirements for applicability of disclosure statement submissions under 4 CFR Part 351 are based on this definition of "company.")

(c) "Contractor" and "subcontractor," as the words pertain to contract applicability requirements of cost accounting standards under the clauses set forth in § 1-3.1204, apply to business units, such as a profit center, division, subsidiary, or similar unit of a company, which perform the contract (including each corporate or group office whose costs are allocated to one or more corporate segments performing under a clause), even in those cases where the contract was entered into on behalf of the overall company rather than the business unit.

(d) For the purpose of determining whether a contract is a national defense or a nondefense contract, the following CASB definitions appearing in 4 CFR 331.20 are set forth below.

(1) A "relevant Federal agency" is any Federal agency making a national defense procurement and any agency whose responsibilities include review, approval, or other action affecting such a procurement.

(2) A "defense contractor" is any contractor entering into a contract with the United States for the production of material or the performance of services for the national defense.

(3) A "defense subcontractor" is any person other than the United States who contracts, at any tier, to perform any part of a defense contractor's contract.

(4) "National defense" is any program for military and atomic energy production or construction, military assistance to any foreign nations, stockpiling, space, and directly related activity.

(e) A "small business concern" is any concern, firm, person, corporation, partnership, cooperative, or other business enterprise which pursuant to 15 U.S.C. 637(b)(6) and the rules and regulations of the Small Business Administration set forth in 13 CFR Part 121 is determined to be a small business concern for the purpose of Government procurement (see 4 CFR 331.20(k) and § 1-1.701).

(f) A "CAS covered contract" is any negotiated contract or subcontract which pursuant to the requirements of the Cost Accounting Standards Board or agency regulations includes a cost accounting standards clause (see §§ 1-3.1204-1 and 1-3.1204-2).

(g) A "negotiated subcontract" is any subcontract except a firm fixed-price subcontract made by a contractor or subcontractor after receiving offers from at least two firms not associated with each other or such contractor or subcontractor, providing (1) the solicitation to all competing firms is identical, (2) price is the only consideration in selecting the firms solicited, and (3) the lowest offer received in compliance with the solicitation from among those solicited is accepted (see 4 CFR 331.20(f)).

b. Section 1-3.1202-1 is revised, as follows:

§ 1-3.1202-1 *Materiality.*

Materiality shall be considered in the application of regulations and standards of the CASB to both national defense and nondefense contracts. The provisions of the CASB appearing in 4 CFR 331.71 apply and are set forth below.

(a) In determining whether amounts of cost are material or immaterial, the following criteria shall be considered where appropriate; no one criterion is necessarily determinative.

(1) The absolute dollar amount involved. The larger the dollar amount, the more likely that it will be material.

(2) The amount of contract cost compared with the amount under consideration. The larger the proportion of the amount under consideration to contract cost the more likely it is to be material.

(3) The relationship between a cost item and a cost objective. Direct cost items, especially if the amounts are themselves part of a base for allocation of indirect cost, will normally have more impact than the same amount of indirect costs.

(4) The impact on Government funding. Changes in accounting treatment will have more impact if they influence the distribution of costs between Government and non-Government cost objectives than if all cost objectives have Government financial support.

(5) The cumulative impact of individually immaterial items. It is appropriate to consider whether such impacts (a) tend to offset one another, or (b) tend to be in the same direction and hence to acccumulate into a material amount.

(6) The cost of administrative processing of the price adjustment modification shall be considered. If the cost to process exceeds the amount to be recovered, it is less likely the amount will be material.

(b) (1) A contract modification for price adjustment or cost allowance under paragraphs (a)(4) and (a)(5) of the Cost Accounting Standards clause set forth in section 331.50 is required only if the cost impact is material (see also § 1-3.1204).

(2) Where a contractor is in noncompliance and does not change a cost accounting practice because the cost impact is immaterial, the contracting agency is not relieved of its responsibilities to ensure that an appropriate price adjustment is obtained if the cost impact of the noncompliance subsequently becomes material. The contractor shall be notified that the Government's decision to forbear action for noncompliance is solely because the cost impact at the time of the notice is immaterial. If at any time thereafter the Government determines that the cost impact of noncompliance with respect to the practice in question is material, the Government then must require action under paragraph (a)(5) of the contract clause for any cost accounting period in which the cost impact is material. The fact that the Government does not pursue a price adjustment does not excuse the contractor from his obligation to comply with the Standard involved.

(3) Whether cost impact is recognized by modifying a single contract, several but not all contracts, or all contracts, or any other suitable technique, is a contract administration matter. The Standards, rules, and regulations of the Board do not in any way restrict the capacity of the parties to select the method by which the cost impact attributable to a change in cost accounting practice is recognized.

c. Section 1-3.1203 is revised by changing the caption, deleting the previous text, and adding new text, as follows:

§ 1-3.1203 *Requirements.*

§ 1-3.1203-1 *Prime contractor disclosure statements.*

(a) *Nondefense awards.* Nondefense contracts, irrespective of whether they are subject to cost accounting standards and contain appropriate clauses, will not be counted in connection with Disclousure Statement dollar threshold submission requirements under 4 CFR Part 351.

(b) *National defense awards.* The filing of disclosure statements by certain large business concerns is required in connection with the award of certain negotiated national defense contracts and subcontracts in accordance with CASB rules (see 4 CFR Part 351 et seq.). A summary of those rules follow:

(1) A disclosure statement, when required to be submitted, covers the practices of a company's profit centers, divisions, or similar organizational units whose costs are included in the total price of a negotiated national defense "covered" contract. The requirement extends to each corporate or group office whose costs are allocated to such performing units of the company.

(2) Any company, other than a small business concern, which received company-wide net awards of negotiated national defense prime contracts and subcontracts subject to cost accounting standards totaling more than $10 million in its most recent completed cost accounting period, must submit a disclosure statement within 90 days after the end of that period.

(3) Any company, other than a small business concern, that receives a negotiated national defense contract or subcontract award which is subject to cost accounting standards and is for $10 million or more must submit a completed disclosure statement as a condition of award.

(c) *Preaward submission of disclosure statement(s).* Each offeror submitting an offer which could result in a national defense CAS covered contract shall furnish copies of his disclosure statement(s) to the offices listed in paragraph (d) of this section concurrently with the submission of his proposal to the contracting officer except when the offeror has executed the certificate of monetary exemption, the certificate of interim exemption, or the certificate of previously submitted disclosure statement (see § 1-3.1203-(a)(1)). More than one disclosure statement may be required in connection with the award of a contract (see 4 CFR 351.40(a)). Award of a contract shall not be made until a determination has been made by the cognizant contracting officer (ACO) that a disclosure statement is adequate (see 1-3.1205(b)) unless, in order to protect the interests of the Government, the contracting officer waives this requirement. In this event, a determination shall be made as soon as possible after the award.

(d) *Distribution of disclosure statement(s).* The offeror shall distribute his disclosure statement(s) as follows:

(1) Original and one copy to the cognizant contracting officer (Contract Administration Office (Attn.: ACO), see DOD Directory of Contract Administration Components, DOD 4105.59H) unless otherwise specified in accordance with § 1-3.1208(c);

(2) One copy to the cognizant contract auditor; and

(3) One copy to the Cost Accounting Standards Board, 441 G Street NW., Washington, D.C. 20548, within 10 days after the determination of adequacy pursuant to § 1-3.1205(b).

(e) *Postaward submission of disclosure statement(s).* Postaward submission of disclosure statement(s) may be authorized only when the contracting officer has made a written determination that such authorization is essential: (i) To the national defense, (ii) because of the public exigency, or (iii) to avoid undue hardship. Each determination shall set forth facts which clearly support the determination to authorize postaward submission, and a copy of the determination shall be included in the contract file. Authorization issued pursuant to this paragraph shall specify the period of time, not to exceed 90 days after contract award, within which disclosure must be made.

(f) *Determination by agency head that it is impractical to secure disclosure statement(s).* If the head of the agency (see § 1-1.204) or his designee; the cognizant Assistant Secretary for a Military Department; or the Director of the Defense Logistics Agency, the Defense Communications Agency, the Defense Nuclear Agency, or the Defense Mapping Agency determines that it is impractical to secure the disclosure statement(s) in accordance with the clause(s) in § 1-3.1204-1 and this Subpart 1-3.12 or ASPR 7-104.83(a) and ASPR Part 12 of section III, he may authorize award of such contract without obtaining such statement(s). This authority shall not be delegated. He shall, within 30 days thereafter, submit a report to the Cost Accounting Standards Board, setting forth all material facts.

(g) *Privileged and confidential information in disclosure statement(s).* If the offeror or contractor notified the contracting officer that the disclosure statement contains trade secrets and commercial or financial information which is privileged and confidential, the disclosure statement will be protected and will not be released outside the Government (see paragraph (a)(1) of the cost accounting standards clause or paragraph (a)(2) of the disclosure and consistency of cost accounting practices clause).

(h) *Amendment of disclosure statements.* Amendments of a disclosure statement after contract award shall be processed in accordance with 4 CFR 351.120 and §§ 1-3.1205(d) and 1-3.1207. Normally the cognizant contracting officer should require resubmission of a complete, updated disclosure statement pursuant to 4 CFR 351.120, only when the number of amended pages or the nature of the amendments are so extensive that the review process would be substantially expedited as a result of the resubmission.

(i) *Responsibility to maintain accuracy of disclosure statement(s).* The contractor or subcontractor who has contracts containing either the cost accounting standards clause or the disclosure and consistency of cost accounting practices clause has a responsibility to maintain an accurate disclosure statement(s) and comply with those disclosed practices if: (1) He was awarded a negotiated national defense contract in his current cost accounting period of $10 million or more, or (2) he is, or is a part of, a company which, together with its subsidiaries, received net awards of negotiated national defense prime contracts and subcontracts subject to cost accounting standards totaling more than $10 million in his most recent completed cost accounting period. Should his obligation to maintain the disclosure statement cease because he no longer meets or exceeds the financial thresholds, he will be required to follow consistently the disclosed practices for those contracts awarded during a period in which he was obligated to submit a disclosure statement(s). A change to such practices may be proposed by either the contractor or the Government and negotiated by the contractor and his CAS cognizant contracting officer.

§ 1-3.1203-2 *Applicability of cost accounting standards.*

(a) *Small business concerns.* All contracts and subcontracts with small business concerns are wholly exempt from cost accounting standards.

(b) *National defense contracts with other than small business concerns.* (1) The applicability of cost accounting standards to a negotiated national defense contract is implemented by incorporation of a clause in the contract as required by CASB rules, 4 CFR Part 331 or 332. These national defense CAS awards consist of the first negotiated national defense contract or subcontract of more than $500,000 received by a contractor business unit

and subsequent negotiated national defense prime contracts and subcontracts of more than $100,000 received by that business unit. Whenever a business unit completes all contracts subject to a CAS clause required by CASB regulations, its obligation to follow CAS requirements ends and is not reinstated until it again receives an award in excess of $500,000. Award and sales data of the preceding cost accounting period are used to determine type of contract coverage for the current period. There are two types of CAS coverage: Full coverage under 4 CFR Part 331 and modified coverage under 4 CFR Part 332.

(2) Full coverage applies to contractor business units which: (i) Receive a national defense CAS award of $10 million or more, (ii) received national defense CAS awards during the preceding cost accounting period of $10 million or more, or (iii) received national defense CAS awards during the preceding cost accounting period of less than $10 million but such CAS awards accounted for 10 percent or more of the business unit's sales for the preceding period. These dollar thresholds apply to contractor business units, irrespective of company-wide award dollar totals.

(3) Modified coverage applies to contractor business units which received national defense CAS awards during the preceding period of less than $10 million and such CAS awards accounted for less than 10 percent of the business unit's sales of the preceding period. Modified coverage requires the contractor to comply only with requirements of standard 401, consistency in estimating, accumulating, and reporting costs (4 CFR Part 401) and standard 402, consistency in allocating costs incurred for the same purpose (4 CFR Part 402).

(4) CAS coverage is extended to national defense subcontract awards under CAS covered contracts under the same provisions; thus a subcontractor could be required to comply with full coverage even though the prime contractor is required to comply only with modified coverage.

(5) Certain exemptions and waivers to applicability of CAS standards, rules, and regulations apply to national defense contracts. Cost accounting standards are applicable to negotiated national defense contracts exceeding $100,000 except when:

(i) The price is: (A) Based on established catalog or market prices of commercial items sold in substantial quantities to the general public, or (B) set by law or regulation;

(ii) The contract is awarded to a small business concern;

(iii) The contract is to be executed and performed in its entirety outside the United States, its territories and possessions; or

(iv) The CASB has otherwise approved a waiver or exemption.

NOTE 1.—Under certain circumstances as prescribed in 4 CFR 331.30(b)(8), the CASB has provided an exemption for national defense contracts and subcontracts of $500,000 or less (see also paragraph (b)(1) of this § 1-3.1203-2). This exemption is also applicable to nondefense contract and subcontract awards.

NOTE 2.—Two blanket exemptions are applicable to national defense subcontracts under CAS covered contracts: (a) When the subcontract is awarded to a small business concern, and (b) when the subcontract is awarded on a firm, fixed-price basis after the contractor or subcontractor making the award received offers from at lest two firms not associated with each other or such contractor or subcontractor, providing: (1) The solicitation to all competing firms is identical, (2) price is the only consideration in selecting the subcontractor from among the competing firms solicited, and (3) the lowest offer received in compliance with the solicitation from among those solicited is accepted. These blanket exemptions are also applicable to nondefense subcontract awards.

(c) *Nondefense contracts with other than small business concerns.* (1) The applicability of cost accounting standards to a negotiated nondefense contract is implemented by a clause in the contract (substantially similar to the CASB clauses) as required by this Subpart 1-3.12. These nondefense CAS awards consist of the first negotiated nondefense contract or subcontract over $500,000 received by a contractor business unit in the event the business unit is not performing a CAS covered contract or subcontract. Otherwise, cost accounting standards are applicable to negotiated nondefense contracts and subcontracts over $100,000 received by that business unit. Whenever a contractor business unit completes the performance of all CAS covered contracts, the obligation to follow cost accounting standards ends and is not reinstated until it again receives an award in excess of $500,000. National defense CAS covered award and sales data of the preceding cost accounting period (normally, the contractor's fiscal year) for the business unit receiving the award are used to determine the type of contract coverage for the current period. Nondefense CAS covered award data is not used. There are two types of nondefense CAS coverage; namely full coverage and modified coverage.

(2) Full coverage applies to negotiated nondefense contracts and subcontracts of over $100,000 awarded to contractor business units which: (i) Are performing a national defense CAS covered award of $10 million or more, (ii) received national defense CAS covered awards during the preceding cost accounting period of $10 million or more, or (iii) received national defense CAS covered awards during the preceding cost accounting period of under $10 million but such CAS awards accounted for 10 percent or more of the business unit's sales for the preceding period. These national defense dollar thresholds apply to contractor business units, irrespective of company-wide national defense award dollar totals (see § 1-3.1203-2(c)(4) for exemptions).

(3) Modified coverage applies to the first negotiated nondefense contract or subcontract over $500,000 received by a contractor business unit in the event the business unit is not performing a CAS covered contract or subcontract. Otherwise, cost accounting standards are applicable to negotiated nondefense contracts and subcontracts over $100,000 received by that business unit, unless full coverage in accordance with paragraph (2) of this § 1-3.1203-2(c) applies (see § 1-3.1203-2(c)(4) for exemptions).

(4) The exemptions and waivers which apply to national defense contracts and subcontracts with large business concerns also apply to nondefense contracts and subcontracts. These provisions are contained in paragraph (b)(5) of this § 1-3.1203-2. Deviations in subcontract flowdown requirements granted pursuant to ASPR 3-1204.2(b) or § 1-3.1204-3(b) are also applicable to subcontracts under nondefense contracts. In addition to the exemptions and waivers in paragraphs (a) and (b)(5) of this § 1-3.1203-2, the following nondefense procurements are exempt:

(i) Contracts with educational institutions subject to Subpart 1-15.3;

(ii) Contracts with State and local Governments subject to Subpart 1-15.7;

(iii) Contracts with hospitals;

(iv) Firm fixed-price contracts to be awarded after receiving offers from at least two firms not associated with each other, providing that: (A) The solicitation to all competing firms is identical, (B) price is the only consideration in selecting the contractor from among the competing firms solicited, (C) the lowest offer received in compliance with the solicitation from among those solicited is accepted, and (D) the profit center, division, or similar organizational unit of a company to which the contract is to be awarded is not on the date of such award performing under a CAS covered national defense contract or subcontract. Under (D), performance of a contract or subcontract extends from the date of award of a contract or subcontract to the date when the work required by the contract or subcontract is completed; and

(v) Contracts where a waiver under § 1-3.1211 has been approved or to the extent a modification or withdrawal under § 1-3.1218 is applicable.

NOTE.—FPR temporary regulations 40 and 43 are currently applicable in this regard.

§ 1-3.1203-3 *Solicitation notices.*

(a) *National defense contracts.* (1) The notice entitled disclosure statement-cost accounting practices and certification in this § 1-3.1203-3(a)(1) shall be inserted in all national defense solicitations which are likely to result in the award of a negotiated contract exceeding $100,000 on and after March 10, 1978, except when the price is: (i) Based on established catalog or market prices of commercial items sold in substantial quantities to the general public, or (ii) set by law or regulation. The notice shall not be inserted if the solicitation is limited to small business concerns. The notice should also be excluded from solicitations sent to the Canadian Commercial Corp. or from solicitations which will result in contracts executed and performed in their entirety outside the United States, its territories and possessions.

DISCLOSURE STATEMENT—COST ACCOUNTING PRACTICES AND CERTIFICATION

Any contract in excess of $100,000 resulting from this solicitation except: (i) When the price negotiated is based on: (A) Established catalog or market prices of commercial items sold in substantial quantities to the general public, or (B) prices set by law or regulation: (ii) contracts awarded to small business concerns (as defined in 1-701.1 of the Armed Services procurment regulations or FPR § 1-1.701-1); or (iii) contracts which are otherwise exempt (see 4 CFR 331.30(b)) shall be subject to the requirements of the Cost Accounting Standards Board. Any offeror submitting a proposal, which, if accepted, will result in a contract subject to the requirements of the Cost Accounting Standards Board must, as a condition of contracting, submit a disclosure statement as required by regulations of the Board. The disclosure statement must be submitted as a part of the offeror's proposal under this solicitation (see (I), below) unless: (i) The offeror, together with all divisions, subsidiaries, and affiliates under common control, did not receive net awards exceeding the monetary exemption for disclosure as established by the Cost Accounting Standards Board (see (II), below); (ii) the offeror exceeded the monetary exemption in his cost accounting period immediately preceding the cost accounting period in which this proposal was submitted but, in accordance with the regulations of the Cost Accounting Standards Board, is not yet required to submit a disclosure statement (see (III), below); (iii) the offeror has already submitted a disclosure statement disclosing the practices used in connection with the pricing of this proposal (see (IV), below); or (iv) post-award submission has been authorized by the Contracting Officer. See 4 CFR 351.70 for submission of copy of disclosure statement to the Cost Accounting Standards Board.

CAUTION.—A practice disclosed in a disclosure statement shall not, by virtue of such disclosure, be deemed to be a proper, approved, or agreed to practice for pricing proposals or accumulating and reporting contract performance cost data.

Check the appropriate box below.

☐ I. Certificate of concurrent submission of disclosure statement(s). The offeror hereby certifies that he has submitted, as a part of his proposal under this solicitation, copies of the disclosure statement(s) as follows: (i) Original and one copy to the cognizant contracting officer (Administrative Contracting Officer (ACO), see DOD Directory of Contract Administration Components (DOD 4105.59H)); and (ii) one copy to the cognizant contract auditor.

Date of disclosure statement(s): _____.

Name(s) and address(es) of cognizant ACO(s) where filed: _____.

The offeror further certifies that practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the disclosure statement(s).

☐ II. Certificate of monetary exemption. The offeror hereby certified that he, together with all divisions, subsidiaries, and affiliates under common control, did not receive net awards of negotiated national defense prime contracts and subcontracts subject to cost accounting standards totaling more than $10 million in his cost accounting period immediately preceding the period in which this proposal was submitted. The offeror further certifies that if his status changes prior to an award resulting from this proposal he will advise the contracting officer immediately.

CAUTION.—Offerors who submitted a Disclosure Statement under the filing requirements previously established by the Cost Accounting Standards Board may claim this exemption only if the dollar volume of CAS covered national defense prime contract and subcontract awards in their preceding cost accounting period did not exceed the $10 million threshold and the amount of this award will be less than $10 million. Such offerors will continue to be responsible for maintaining the disclosure statement and following the disclosed practices on CAS covered prime contracts and subcontracts awarded during the period in which a disclosure statement was required.

☐ III. Certificate of interim exemption. The offeror hereby certifies that: (i) He first exceeded the monetary exemption for disclosure, as defined in (II) above, in his cost accounting period immediately preceding the cost accounting period in which this proposal was submitted, and (ii) in accordance with the regulations of the Cost Accounting Standards Board (4 CFR 351.40(f)), he is not yet required to submit a disclosure statement. The offeror further certifies that if an award resulting from this proposal has not been made within 90 days after the end of that period, he will immediately submit a revised certificate to the contracting officer, in the form specified under (I), above or (IV), below, as appropriate, to verify his submission of a completed disclosure statement.

CAUTION.—Offerors may not claim this exemption if they are currently required to disclose because they were awarded a CAS covered national defense prime contract or subcontract of $10 million or more in the current cost accounting period. Further, the exemption applies only in connection with proposals submitted prior to expiration of the 90 day period following the cost accounting period in which the monetary exemption was exceeded.

☐ IV. Certificate of previously submitted disclosure statement(s). The offeror hereby certifies that the disclosure statement(s) were filed as follows:

Date of disclosure statement(s): _____.

Name(s) and address(es) of cognizant contracting officer(s) (ACO(s)) where filed: _____.

The offeror further certifies that practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the disclosure statement(s).

(2) The Cost Accounting Standards Board has provided for the exemption of national defense contracts of $500,000 or less under certain circumstances. 4 CFR 331.30(b)(8) prescribes the circumstances under which such an exemption is applicable. In order to effectively administer the requirements of that paragraph, the solicitation notice in this § 1-3.1203-3(a)(2) shall be inserted in all solicitations requiring the inclusion of the solicitation notice in § 1-3.1203-3(a)(1).

COST ACCOUNTING STANDARDS—EXEMPTIONS FOR CONTRACTS OF $500,000 OR LESS

If this proposal is expected to result in the award of a contract of $500,000 or less, the offeror shall indicate whether the exemption to the cost accounting standards clause under the provisions of 4 CFR 331.30(b)(8) is claimed. Failure to check the box below shall mean that the resultant contract is subject to the cost accounting standards clause or that the offeror elects to comply with such clause.

☐ The offeror hereby claims an exemption from the Cost Accounting Standards clause under the provisions of 4 CFR 331.30(b)(8) and certifies that he has received notification of final acceptance of all deliverable items on (i) all prime contracts or subcontracts in excess of $500,000 which contain the Cost Accounting Standards clause, and (ii) all prime contracts or subcontracts of $500,000 or less awarded after January 1, 1975, which contain the Cost Accounting Standards clause. The offeror further certifies he will immediately notify the Contracting Officer in writing in the event he is awarded any other contract or subcontract containing the Cost Accounting Standards clause subsequent to the date of this certificiate but prior to the date of any award resulting from this proposal.

(3) The Cost Accounting Standards Board has provided for the use of modified contract coverage under provisions of 4 CFR 332 when the offeror is eligible and so elects. In order to effectively administer those provisons, the solicitation notice in § 1-3.1203-3(a)(3) shall be inserted in all solicitations requiring the inclusion of the solicitation notice in § 1-3.1203-3(a)(1).

COST ACCOUNTING STANDARDS ELIGIBILITY FOR MODIFIED CONTRACT COVERAGE

If the offeror is eligible to use the modified provisions of 4 CFR Part 332, and elects to do so, he shall indicate by checking the box below. Checking the box below shall mean that the resultant contract is subject to the Disclosure and Consistency of Cost Accounting Practices clause in lieu of the Cost Accounting Standards clause.

☐ The offeror hereby cleaims an exemption from the Cost Accounting Standards

clause under the provisions of 4 CFR 331.30(b)(2), and certifies that he is eligible for use of the Disclosure and Consistency of Cost Accounting Practices clause because (i) during his cost accounting period immediately preceding the period in which this proposal was submitted, he received less than $10 million in awards of CAS covered national defense prime contracts and subcontracts, and (ii) the sum of such awards equaled less than 10 percent of his total sales during that cost accounting period. The offeror further certifies that if his status changes prior to an award resulting from this proposal, he will advise the contracting officer immediately.

CAUTION: Offerors may not claim the above eligibility for modified contract coverage if this proposal is expected to result in the award of a contract of $10 million or more or if, during their current cost accounting period, they have been awarded a single CAS-covered national defense prime contract or subcontract of $10 million or more.

(4) In order to effectively administer equitable adjustments for new standards, the solicitation notice in this § 1-3.1203-3(a)(4) shall be inserted in all solicitations requiring the inclusion of the solicitation notice in § 1-3.1203-3(a)(1).

ADDITIONAL COST ACCOUNTING STANDARDS APPLICABLE TO EXISTING CONTRACTS

The offeror shall indicate below whether award of the contemplated contract would, in accordance with paragraph (a)(3) of the Cost Accounting Standards clause, require a change in his established cost accounting practices affecting existing contracts and subcontracts.

☐ Yes ☐ No

NOTE.—If the offeror has checked "yes" above, and is awarded the contemplated contract, he will be required to comply with the Administration of Cost Accounting Standards clause.

(5) Insert the contract clauses set forth in § 1-3.1204-1 in all national defense solicitations which are likely to result in a negotiated contract exceeding $100,000.

(b) *Nondefense contracts.* Insert the clauses set forth in § 1-3.1204-2 and the following notice in all solicitations which are likely to result in a negotiated nondefense contract exceeding $100,000, except when:

(1) The price is based on established catalog or market prices of commercial items sold in substantial quantities to the general public;

(2) The price is set by law or regulation;

(3) The solicitation is limited to small business concerns;

(4) The solicitation is sent to the Canadian Commercial Corporation;

(5) The contracts will be executed and performed in their entirety outside the United States, its territories and possessions; or

(6) The solicitation is sent exclusively to (i) educational institutions, (ii) State and local governments, and (iii) hospitals, when all potential offerors are exempt pursuant to § 1-3.1203-2(c)(4).

COST ACCOUNTING STANDARDS CERTIFICATION—NONDEFENSE APPLICABILITY

Any negotiated contract in excess of $100,000 resulting from this solicitation shall be subject to the requirements of the clauses entitles Cost Accounting Standards—Nondefense Contract (FPR § 1-3.1204-2(a)) and Administration of Cost Accounting Standards (FPR § 1-3.1204-1(b)) if it is awarded to a contractor's business unit that is performing a national defense contract or subcontract which is subject to cost accounting standards pursuant to 4 CFR 331 at the time of award, except contracts which are otherwise exempt (see FPR § 1-3.1203-2 (a) and (c)(4)). Otherwise, an award resulting from this solicitation shall be subject to the requirements of the clauses entitled Consistency of Cost Accounting Practices—Nondefense Contract (FPR § 1-3.1204-2(b)) and Administration of Cost Accounting Standards (FPR § 1-3.1204-1(b)) if the award is (i) the first negotiated contract over $500,000 in the event the award is to a contractor's business unit that is not performing under any CAS covered national defense or nondefense contract or subcontract, or (ii) a negotiated contract over $100,000 in the event the award is to a contractor's business unit that is performing under any CAS covered national defense or nondefense contract or subcontract, except contracts which are otherwise exempt (see FPR § 1-3.1203-2 (a) and (c)(4)). This solicitation notice is not applicable to small business concerns.

CERTIFICATE OF CAS APPLICABILITY

The offeror hereby certifies that:

A. ☐ It is currently performing a negotiated national defense contract or subcontract that contains a Cost Accounting Standards Clause (4 CFR Part 331), and it is currently required to accept that clause in any new negotiated national defense contracts it receives that are subject to cost accounting standards.

B. ☐ It is currently performing a negotiated national defense or nondefense contract or subcontract that contains a cost accounting standards clause required by 4 CFR Part 331 or 332 or by FPR Subpart 1-3.12, but it is not required to accept the 4 CFR 331 clause in new negotiated national defense contracts or subcontracts which it receives that are subject to cost accounting standards.

C. ☐ It is not performing any CAS covered national defense or nondefense contract or subcontract. The offeror further certifies that it will immediately notify the contracting officer in writing in the event that it is awarded any negotiated national defense or nondefense contract or subcontract containing any cost accounting standards clause subsequent to the date of this certificate but prior to the date of the award of a contract resulting from this solicitation.

D. ☐ It is an educational institution receiving contract awards subject to FPR Subpart 1-15.3 (FMC 73-8, OMB Circular A-21).

E. ☐ It is a State or local government receiving contract awards subject to FPR Subpart 1-15.7 (FMC 74-4, OMB Circular A-87).

F. ☐ It is a hospital.

NOTE.—Certain firm fixed price negotiated nondefense contracts awarded on the basis of price competition may be determined by the Contracting Officer (at the time of award) to be exempt from cost accounting standards (FPR § 1-3.1203-2(c)(4)(iv)).

ADDITIONAL CERTIFICATION—CAS APPLICABLE OFFERORS

G. ☐ The offeror, subject to cost accounting standards but not certifying under D, E, or F above, further certifies that practices used in estimating costs in pricing this proposal are consistent with the practices disclosed in the Disclosure Statement(s) where they have been submitted pursuant to CASB regulations (4 CFR Part 351).

DATA REQUIRED—CAS COVERED OFFERORS

The Offeror certifying under A or B above but not under D, E, or F above, is required to furnish the name, address (including agency or department component), and telephone number of the cognizant contracting officer admnistering the offeror's CAS covered contracts. If A above is checked, the offeror will also identify those currently effective cost accounting standards, if any, which upon award of the next negotiated national defense contract or subcontract will become effective upon the offeror.

Name of CO: _____
Address: _____
Telephone Number: _____
Standards not yet applicable: _____

d. Section 1-3.1204 is revised, as follows:

§ 1-3.1204 *Contract clauses.*

(a) *National defense contracts.* (1) The clauses set forth in paragraphs (a)(1) and (b) of § 1-3.1204-1 shall be inserted in all negotiated national defense contracts exceeding $100,000, except the following:

(i) When the price is based on established catalog or market prices of commercial items sold in substantial quantities to the general public, or is set by law or regulations. The catalog or market price exemption is determined to exist even though the award is made on the basis of adequate competition. It is the offeror's responsibility to request and to provide justification for a catalog or market price exemption. In providing such justification, the offeror shall (A) indicate in his proposal, and in any changes in his offered price, that the proposed price is based on an established catalog or market price of a commercial item sold in substantial quantities to the general public, rather than derived from the stimulus of competition which may be present in the particular procurement; and (B) furnish information necessary to substantiate the catalog or market price exemption (see ASPR 3-807.3(j)). However, the procuring activity must determine in each case whether or not the exemption applies;

(ii) Contracts awarded to an offeror who is a small business concern (see ASPR 1-702(c) and §§ 1-1.701 and 1-1.703);

(iii) Contracts for which the Cost Accounting Standards Board has approved other waivers or exemptions pursuant to 4 CFR 331.30;

(iv) Contracts with contractors who are eligible for and have elected to use modified contract coverage under 4 CFR Part 332;

(v) Contracts which are executed and performed in their entirety outside the United States, its territories and posessions; or

(vi) Consistent with (iii), above, contracts of $500,000 or less under the circumstances prescribed in 4 CFR 331.30(b)(8).

(2) The clauses set forth in paragraphs (a)(2) and (b) of § 1-3.1204-1 shall be inserted in all negotiated national defense contracts exceeding $100,000 but less than $10 million when the offeror certifies he is eligible for and elects to use modified contract coverage under provisions of 4 CFR Part 332 (see § 1-3.1204(a)(1)(iv)).

(b) *Nondefense contracts.* Either the clause set forth in paragraph (a) or (b) of § 1-3.1204-2 as appropriate in accordance with §3.1203-2(c) together with the clause set forth in paragraph (b) of § 1-3.1204-1 shall be inserted in negotiated nondefense contracts.

e. Section 1-3.1204-1 is amended by (1) revising the caption, (2) incorporating an amended Cost Accounting Standards clause in a new paragraph (a)(1), (3) adding a new paragraph (a)(2) to incorporate the 4 CFR 332 Disclosure and Consistency of Cost Accounting Standards clause, and (4) adding a new paragraph (b) to incorporate a revised Administration of Cost Accounting Standards clause, as follows:

§ 1-3.1204-1 *National defense contract clauses.*

(a)(1) *Full contract coverage clause.*

COST ACCOUNTING STANDARDS

(a) Unless the Cost Accounting Standards Board has prescribed rules or regulations exempting the Contractor or this contract from standards, rules, and regulations promulgated pursuant to 50 U.S.C. App. 2168 (Pub. L. 91-379, August 15, 1970), the Contractor, in connection with this contract, shall:

* * * * *

(d) * * *

(2) Prices set by law or regulation, and except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to accept the Cost Accounting Standards clause by reason of § 331.30(b) of Title 4, Code of Federal Regulations (4 CFR 331.30(b)).

* * * * *

NOTE.—(1) * * *

NOTE.—(2) * * *

NOTE.—(3) If the subcontractor is a business unit which, pursuant to 4 CFR Part 332 is entitled to elect modified contract coverage and to follow Standards 401 and 402 only, the clause entitled "Disclosure and Consistency of Cost Accounting Practices" set forth in ASPR 7-104.83(a)(2) (see also FPR 1-3.1204-1(a)(2)) shall be inserted in lieu of this clause.

* * * * *

(2) *Modified contract coverage clause.*

DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES

(a) The Contractor, in connection with this contract, shall:

(1) Comply with the requirements of 4 CFR Parts 401, Consistency in Estimating, Accumulating and Reporting Costs, and 402, Consistency in Allocating Costs Incurred for the Same Purpose, in effect on the date of award of this contract.

(2) If it is a business unit of a company required to submit a Disclosure Statement, disclose in writing its cost accounting practices as required by regulations of the Cost Accounting Standards Board. The required disclosures must be made prior to contract award unless the Contracting Officer provides a written notice to the Contractor authorizing post-award submission in accordance with regulations of the Cost Accounting Standards Board. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement will be protected and will not be released outside of the Government.

NOTE.—(1) Subcontractors shall be required to submit their Disclosure Statements to the Contractor. However, if a subcontractor has previously submitted his Disclosure Statement to a Government Contracting Officer, he may satisfy that requirement by certifying to the contractor the date of such Statement and the address of the Contracting Officer.

NOTE.—(2) In any case where a subcontractor determines that the Disclosure Statement information is privileged and confidential and declines to provide it to his Contractor or higher tier subcontractor, the Contractor may authorize direct submission of that subcontractor's Disclosure Statement to the same Government offices to which the Contractor was required to make submission of his Disclosure Statement. Such authorization shall in no way relieve the Contractor of liability if he or a subcontractor fails to comply with an applicable Cost Accounting Standard or to follow any practice disclosed pursuant to this paragraph and such failure results in any incrased costs paid by the United States. In view of the foregoing and since the contract may be subject to adjustment under this clause by reason of any failure to comply with rules, regulations, and Standards of the Cost Accounting Standards Board in connection with covered subcontracts, it is expected that the Contractor may wish to include a clause in each such subcontract requiring the subcontractor to appropriately indemnify the Contractor. However, the inclusion of such a clause and the terms thereof are matters for negotiation and agreement between the Contractor and the subcontractor, provided that they do not conflict with the duties of the Contractor under its contract with the Government. It is also expected that any subcontractor subject to such indemnification will generally require substantially similar indemnification to be submitted by his subcontractors.

(3) Follow consistently the cost accounting practices disclosed pursuant to (2), above, and the established cost accounting practices of the business unit. A change to such practices may be proposed, however, by either the Government or the Contractor, and the Contractor agrees to negotiate with the Contracting Officer the terms and conditions under which a change may be made. After the terms and conditions under which the change is to be made have been agreed to, the change must be applied prospectively to this contract, and the Disclosure Statement if affected must be amended accordingly. No agreement may be made under this provision that will increase costs paid by the United States.

(4) Agree to an adjustment of the contract price or cost allowance, as appropriate, if he or a subcontractor fails to comply with the applicable Cost Accounting Standards or to follow any practice disclosed or established pursuant to subparagraph (a)(2) or (a)(3), above, and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States together with interest thereon computed at the rate determined by the Secretary of the Treasury pursuant to Pub. L. 92-41, 85 Stat. 97, or 7 percent per annum, whichever is less, from the time the payment by the United States was made to the time the adjustment is effected.

(b) If the parties fail to agree whether the Contractor has complied with an applicable Cost Accounting Standard, rule, or regulation of the Cost Accounting Standards Board and as to any cost adjustment demanded by the United States, such failure to agree shall be a dispute concerning a question of fact within the meaning of the Disputes clause of this contract.

(c) The Contractor shall permit any authorized representatives of the head of the agency, of the Cost Accounting Standards Board, or of the Comptroller General of the United States to examine and make copies of any documents, papers, and records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts into which he enters the substance of this clause except paragraph (b) of this section, and shall require such inclusion in all other subcontracts of any tier, except that:

(1) If the subcontract is awarded to a business unit which pursuant to part 331 is required to follow all Cost Accounting Standards, the Cost Accounting Standards clause set forth in ASPR 7-104.83(a)(1) or FPR § 1-3.1204-1(a)(1) shall be inserted in lieu of this clause; or

(2) This requirement shall not apply to negotiated subcontracts where the price negotiated is based on:

(i) Established catalog or market prices of commercial items sold in substantial quantities to the general public, or

(ii) Prices set by law or regulation; or

(3) The requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to accept a cost accounting standards clause by reason of section 331.30(b) of the Board's regulation.

NOTE.—The terms defined in section 331.20 of part 331 of title 4, Code of Federal Regulations (4 CFR 331.20) shall have the same meanings herein. As there defined, "negotiated subcontract" means "any subcontract except a firm fixed-price subcontract made by a Contractor or Subcontractor after receiving offers from at least two firms not associated with each other or such Contractor or Subcontractor, providing (1) the solicitation to all competing firms is

identical, (2) price is the only consideration in selecting the subcontractor from among the competing firms solicited, and (3) the lowest offer received in compliance with the solicitation from among those solicited is accepted."

(e) Notwithstanding (d), above, if this is a contract with an agency which permits subcontractors to appeal final decisions of the Contracting Officer directly to the head of the agency or his duly authorized representative, then the contractor shall include the substance of paragraph (b) as well.

(b) *Administration clause.*

ADMINISTRATION OF COST ACCOUNTING STANDARDS

For the purpose of administrating Cost Accounting Standards requirements under this contract, the Contractor shall:

(a) Submit to the cognizant Contracting Officer a description of the accounting change and the general dollar magnitude of the change to reflect the sum of all increases and the sum of all decreases for all contracts containing the Cost Accounting Standards clause or the Disclosure and Consistency of Cost Accounting Practices clause:

(1) For any change in cost accounting practices required to comply with a new cost accounting standard in accordance with paragraph (a)(3) and (a)(4)(A) of the Cost Accounting Standards clause within 60 days (or such other date as may be mutually agreed to) after award of a contract requiring such change;

(2) For any change to cost accounting practices proposed in accordance with paragraph (a)(4)(B) of the Cost Accounting Standards clause or with paragraph (a)(3) of the Disclosure and Consistency of Cost Accounting Practices clause not less than 60 days (or such other date as may be mutually agreed to) prior to the effective date of the Proposed change; or

(3) For any failure to comply with an applicable Cost Accounting Standard or to follow a disclosed practice as contemplated by paragraph (a)(5) of the Cost Accounting Standards clause or with paragraph (a)(4) of the Disclosure and Consistency of Cost Accounting Practicws clause within 60 days (or such other date as may be mutually agreed to) after the date of agreement of such noncompliance by the Contractor.

(b) Submit a cost impact proposal in the form and manner specified by the cognizant Contracting Officer within sixty (60) days (or such other date as may be mutually agreed to) after the date of determination of the adequacy and compliance of a change submitted pursuant to (a) (1), (2), or (3), above.

(c) Agree to appropriate contract and subcontract amendments to reflect adjustments established in accordance with paragraphs (a)(4) and (a)(5) of the Cost Accounting Standards clause or with paragraphs (a)(3) and (a)(4) of the Disclosure and Consistency of Cost Accounting Practices clause.

(d) When the subcontract is subject to either the Cost Accounting Standards clause or the Disclosure and Consistency of Cost Accounting Practices clause so state in the body of the subcontract and/or in the letter of award. Self-deleting clauses shall not be used.

(e) Include the substance of this clause in all negotiated subcontracts containing either the Cost Accounting Standards clause or the Disclosure and Consistency of Cost Accounting Practices clause. In addition, include a provision in these subcontracts which will require such subcontractors, within 30 days after receipt of award (or such other date as may be mutually agreed to) to submit the following information to the Contract Administration Office cognizant of the subcontractor's facility.

(1) Subcontractor's name and subcontract number.

(2) Dollar amount and date of award.

(3) Name of Contractor making the award.

(4) A statement as to whether the subcontractor has made or proposes to make any changes to accounting practices that affect prime contracts or subcontracts containing the Cost Accounting Standards clause or Disclosure and Consistency of Cost Accounting Practices clause unless such changes have already been reported. If award of the subcontract results in making a cost accounting standard(s) effective for the first time, this shall also be reported.

(f) For negotiated subcontracts containing the Cost Accounting Standards clause, require the subcontractor to comply with all Standards in effect on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data or date of award, whichever is earlier, except when a deviation has been granted pursuant to § 1-3.1204-3(b) or ASPR 3-1204.2(b).

(g) In the event an adjustment is required to be made to any subcontract hereunder, notify the Contracting Officer in writing of such adjustment and agree to an adjustment in the price or estimated cost and fee of this contract, as appropriate, based upon the adjustment established under the subcontract. Such notice shall be given within 30 days after receipt of the proposed subcontract adjustment, and shall include a proposal for adjustment to such higher tier subcontract or prime contract as appropriate.

(h) When either the Cost Accounting Standards clause or the Disclosure and Consistency of Cost Accounting Practices clause and this clause are included in subcontracts, the term "Contracting Officer" shall be suitably altered to identify the purchaser.

f. Section 1-3.1204-2 is revised, as follows:

§ 1-3.1204-2 Nondefense contract clauses.

(a) *Full contract coverage clause.*

COST ACCOUNTING STANDARDS—NONDEFENSE CONTRACT

(a) Unless the Administrator of General Services has prescribed rules or regulations exempting the Contractor or this contract from standards, rules, and regulations promulgated by the Cost Accounting Standards Board, the Contractor, in connection with this contract, shall:

(1) Follow consistently the cost accounting practices established or disclosed as required by regulations of the Cost Accounting Standards Board and administered under the Administration of Cost Accounting Standards clause. If any change in disclosed practices is made for purposes of any contract or subcontract subject to those disclosure requirements, the change must be applied in a consistent manner to this contract.

(2) Comply with all cost accounting standards which the Contractor is required to comply with by reason of concurrent performance of any contract or subcontract subject to the Cost Accounting Standards clause (4 CFR 331) and administered under the Administration of Cost Accounting Standards clause. The Contractor also shall comply with any cost accounting standard which hereafter becomes applicable to such a contract or subcontract. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract. Compliance shall continue until the Contractor completes performance of work under this contract.

(3) Agree to an equitable adjustment (as provided in the Changes clause of this contract, if any) if the contract cost is affected by a change which, pursuant to (2) above, the Contractor is required to make to his established cost accounting practices whether such practices are covered by a Disclosure Statement or not.

(4) Negotiate with the Contracting Officer to determine the terms and conditions under which a change to either a disclosed cost accounting practice or an established cost accounting practice, other than a change under (3) above, may be made. A change to a practice may be proposed by either the Government or the Contractor, provided, however, that no agreement may be made under this provision that will increase costs paid by the United States.

(5) Agree to an adjustment of the contract price or cost allowance, as appropriate, if it or a subcontractor fails to comply with the applicable Cost Accounting Standards or to follow any practice disclosed or established pursuant to subparagraph (a)(1) or (a)(2) above and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States together with interest thereon computed at the rate determined by the Secretary of the Treasury pursuant to Pub. L. 92-41, (50 U.S.C. App. 1215(b)(2)), or 7 percent per annum, whichever is less, from time the payment by the United States was made to the time the adjustment is effected.

(b) The Contractor shall permit any authorized representatives of the head of the agency, of the Cost Accounting Standards Board, or of the Comptroller General of the United States to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause until the expiration of 3 years after final payment under this contract or such lesser time specified in the Federal Procurement Regulations (FPR) part 1-20.

(c) Unless a subcontract or Subcontractor is exempt under rules or regulations prescribed by the administrator of General Services, the Contractor: (1) shall include the substance of this clause including this paragraph (c) in all negotiated subcontracts under this contract with subcontractors that are currently performing a national defense contract or subcontract that contains the clause entitled to Cost Accounting Standards and that are currently required to accept the clause in applicable national defense awards, and (2) shall include the substance of the Consistency of Cost Accounting Practices—Nondefense Contract clause set forth § 1-3.1204-2(b) of the FPR in negotiated subcontracts under this contract with all other subcontractors. The Contractor may elect to use the substance of the solicitation notice set forth in § 1-3.1203-2(b) of the FPR in his determination of applicability cost accounting standards to subcontracts.

(d) The terms defined in § 331.20 of Part 331 of Title 4, Code of Federal Regulations,

shall have the same meaning herein. As there defined, "negotiated subcontract" means "any subcontract except a firm fixed-price subcontract made by a contractor or subcontractor after receiving offers from at least two firms not associated with each other or such contractor or subcontractor, providing (1) the solicitation to all competing firms is identical, (2) price is the only consideration in selecting the subcontractor from among the competing firms solicited, and (3) the lowest offer received in compliance with the solicitation from among those solicited is accepted."

(e) The administration of this clause by the Government shall be accomplished in conjunction with the administration of the Contractor's national defense contracts and subcontracts subject to rules and regulations of the Cost Accounting Standards Board, pursuant to the Administration of Cost Accounting Standards clause. For the purposes of the Administration of Cost Accounting Standards clause contained in this contract, references to the Cost Accounting Standards clause shall be deemed to include this Cost Accounting Standards—Nondefense Contract clause and reference to the Disclosure and Consistency of Cost Accounting Practices clause shall be deemed to include the Consistency of Cost Accounting Practices—Nondefense Contract clause.

(b) *Modified contract coverage clause.*

CONSISTENCY OF COST ACCOUNTING PRACTICES—NONDEFENSE CONTRACT

(a) Unless the Administrator of General Services has prescribed rules or regulations exempting the Contractor or this contract from standards, rules, and regulations promulgated by the Cost Accounting Standards Board, the Contractor, in connection with this contract, shall:

(1) Comply with the requirements of 4 CFR Parts 401, Consistency in Estimating, Accumulating and Reporting Costs, and 402, Consistency in Allocating Costs Incurred for the Same Purpose, in effect on the date of award of this contract and administered under the Administration of Cost Accounting Standards clause. Compliance shall continue until the Contractor completes performance of work under this contract.

(2) Follow consistently the cost accounting practices established or disclosed as required by regulations of the Cost Accounting Standards Board and administered under the Administration of Cost Accounting Standards clause. If any change in disclosed practices is made for purposes of any contract or subcontract subject to those disclosure requirements, the change must be applied in a consistent manner to this contract. A change to such practices may be proposed, however, by either the Government or the Contractor and the Contractor agrees to negotiate with the Contracting Officer the terms and conditions under which a change may be made. After the terms and Conditions under which the change is to be made have been agreed to the change must be applied prospectively to this contract. No agreement may be made under this provision that will increase costs paid by the United States.

(3) Agree to an adjustment of the contract price or cost allowance, as appropriate, if it or a subcontractor fails to comply with the applicable Cost Accounting Standards or to follow any practice disclosed or established pursuant to subparagraph (a)(2) above and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States together with interest thereon computed at the rate determined by the Secretary of the Treasury pursuant to Pub. L. 92-41, (50 U.S.C. App. 1215(b)(2)), or 7 percent per annum, whichever is less from the time the payment by the United States was made to the time the adjustment is effected.

(b) The Contractor shall permit any authorized representatives of the head of the agency, of the Cost Accounting Standards Board, or of the Comptroller General of the United States to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause until the expiration of 3 years after final payment under this contract or such lesser time specified in the Federal Procurement Regulations (FPR) Part 1-20.

(c) Unless a subcontract or Subcontractor is exempt under rules or regulations prescribed by the Administrator of General services, the Contractor shall include the substance of this clause including this paragraph (c) in all negotiated subcontracts under this contract except that it shall include the substance of the Cost Accounting Standards—Nondefense Contract clause set forth in § 1-3.1204-2(a) of the FPR in negotiated subcontracts under this contract with subcontractors that are currently performing a national defense contract or subcontract that contains the clause entitled Cost Accounting Standards and that are currently required to accept that clause in applicable negotiated national defense contracts. The Contractor may elect to use the substance of the solicitation notice set forth in § 1-3.1203-2(b) of the FPR in his determination of applicability of cost accounting standards to subcontracts.

(d) The terms defined in 4 CFR 331.20 and 332.20 shall have the same meanings herein. As there defined, "negotiated subcontract" means "any subcontract except a firm fixed-price subcontract made by a contractor or subcontractor after receiving offers from at least two firms not associated with each other or such contractor or subcontractor, providing (1) the solicitation to all competing firms is identical, (2) price is the only consideration in selecting the subcontractor from among the competing firms solicited, and (3) the lowest offer received in compliance with the solicitation from among those solicited is accepted."

(e) The administration of this clause by the Government shall be accomplished in conjunction with the administration of the Contractor's national defense contracts and subcontracts, if any, subject to rules and regulations of the Cost Accounting Standards Board, pursuant to the Administration of Cost Accounting Standards clause. For the purposes of the Administration of Cost Accounting Standards clause contained in this contract, references to the Disclosure and Consistency of Cost Accounting Practices clause shall be deemed to include this Consistency of Cost Accounting Practices—Nondefense Contract clauses and references to the Cost Accounting Standards clauses shall be deemed to include the Cost Accounting Standards—Nondefense Contract clause.

(c) *Administration of cost accounting standards clause.* The clause set forth in § 1-3.1204-1(b) shall be used in nondefense contracts and subcontracts as well as in negotiated national defense contracts and subcontracts.

g. Section 1-3.1204-3 is added, as follows:

§ 1-3.1204-3 *National defense subcontracts.*

(a) The Administration of Cost Accounting Standards clause in § 1-3.1204-1(b) requires contractors and subcontractors to flow-down the requirement to comply with cost accounting standards in effect on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost of Pricing Data or date of award, whichever is earlier, inless the subcontractor is exempt from CAS requirements or the subcontractor qualifies for and elects to comply with the modified contract coverage clause.

(b) When the contracting officer concludes that a required subcontract cannot be awarded because it is not feasible or practicable to require the subcontractor who is not eligible for modified contract coverage to comply with all cost accounting standards in effect on the date of the subcontract, a deviation from this requirement may be requested pursuant to § 1-1.009-2(b). In such cases, the deviation shall be contingent on the subcontractor's complying with, as a minimum, the following:

(1) All cost accounting standards initially applicable to the prime contract;

(2) All cost accounting standards applicable to existing contracts or subcontracts being performed by the subcontractor; and

(3) Any cost accounting standard which hereafter becomes applicable to a contract or subcontract of the subcontractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.

(c) A request for deviation should be limited to the extent possible. For example, the subcontractor may object to only one standard; in such case only that one standard shall be excepted and all other standards in effect at that time shall be included in the subcontract. The contracting officer shall clearly document in the file efforts to effect acceptance of all standards and also state the subcontractor's reasons for refusing to accept all current standards.

(d) When a deviation is granted pursuant to this section, the subcontract shall reflect the requirements of the deviation.

NOTE.—Pursuant to § 1-3.1203-2(c)(4), deviations granted to national defense subcontract flowdown requirements are also applicable to subcontracts under nondefense contracts.

h. Section 1-3.1205 is amended by adding a sentence to paragraph (a), as follows:

§ 1-3.1205 *Review of prime contractor Disclosure Statements and changed practices.*

(a) *Contracting officer and auditor support responsibility.* When the Department of Defense (DOD) has contract administration cognizance of a contractor for CASB matters, required Disclosure Statements shall be reviewed by the cognizant administrative contracting officer and contract auditor for all Government agencies including, but not limited to, DOD, NASA, DOE, and GSA (see § 1-3.1208 with respect to contract administration by other Government agencies). Disclosure Statement submissions are not required in connection with the award of nondefense contracts.

* * * * *

i. Section 1-3.1206 is revised by changing the caption and revising the text, as follows:

§ 1-3.1206 *Administration of CAS requirements on subcontracts.*

(a) The prime contractor or higher tier subcontractor is responsible for administering the CAS requirements contained in the subcontracts awarded. However, in recognition of the protections provided to subcontractors by the CAS clauses, subcontractor CAS reviews will often be performed by the Government.

(1) If the subcontractor has previously furnished a Disclosure Statement to a cognizant contracting officer (ACO), the subcontractor may satisfy the requirement for submission by identifying to the prime contractor or higher tier subcontractor the cognizant contracting officer (ACO) to whom it was submitted. Disclosure Statement submissions are not required in connection with the award of nondefense subcontracts.

(2) If the subcontractor considers his Disclosure Statement to contain privileged or confidential information, he may submit the statement directly to his cognizant contracting officer (ACO) and auditor and notify the prime contractor or higher tier subcontractor as provided in (1), above. In such cases a preaward determination of adequacy is not required. Instead, the contracting officer (ACO) cognizant of the subcontractor shall notify the contract auditor that the review for adequacy as well as compliance will be performed during the postaward review conducted to ensure that the subcontractor has complied with his disclosed practices, CAS, and the cost principles, as applicable in Section XV of the ASPR or Part 1-15 of the FPR. After adequacy review, the contracting officer (ACO) cognizant of the subcontractor shall notify the following of the findings: the subcontractor; the prime or higher tier subcontractor; and the contracting officer (ACO) cognizant of the prime or higher tier subcontractor.

(3) In many cases a subcontractor will not be subject to the Disclosure Statement requirement. Yet the same protections against revealing confidential or proprietary data accrue to these subcontractors. such subcontractors may claim in writing to their prime contractors or higher tier subcontractors, that such reviews by prime contractors or higher tier subcontractors would jeopardize their competitive position or that proprietary data are involved. In these cases, the contracting officer (ACO) cognizant of the prime contract will make a determination that it is impractical for the prime or higher tier subcontractor to perform the reviews. The necessary documentation shall be forwarded to the contracting officer (ACO) cognizant of the subcontractor for accomplishment of the reviews. In the event the prime contractor does accomplish the reviews envisioned by the CAS clause, he is responsible for the thoroughness of the reviews and must satisfy the contracting officer (ACO) cognizant of the prime contract.

(b) When price adjustments or determinations of adequacy, inadequacy, or noncompliance are required by the Government, the contracting officer (ACO) cognizant of the subcontractor shall make his recommendations to the contracting officer (ACO) cognizant of the prime contractor or next higher tier subcontractor. In the case of price adjustments, the procedures described in § 1-3.1207(c)(3) shall be followed. The contracting officer (ACO) cognizant of the prime contractor or next higher tier subcontractor shall not reverse the determinations of the contracting officer (ACO) cognizant of the subcontractor. Such determinations shall be used as the basis for actions with respect to the prime contract.

(c) Postward submission of the subcontractor's Disclosure Statement (see § 1-3.1203—1(e)) must be approved by the contracting officer (ACO) having cognizance of the prime contractor. Prior to authorizing postaward submission, the contracting officer (ACO) cognizant of the prime contractor shall coordinate with the contracting officer (ACO) cognizant of the subcontractor to ensure that this action will not have an adverse impact on other contracts and subcontracts subject to CAS requirements, and with the contracting officer in the procurement office (PCO) to obtain the information required in making the written determination prescribed by § 1-3.1203-1(e).

(d) A determination that it is impractical to secure a subcontractor's Disclosure Statement must be made in accordance with § 1-3.1203—1(f).

j. Section 1-3.1207 is amended by revising paragraphs (a) and (b) and by revising the introductory material in paragraph (c), as follows:

§ 1-3.1207 *Contract price adjustments.*

(a) *Modifications to Disclosure Statements or established practices.* Paragraphs (a)(4) of the Cost Accounting Standards clause and (a)(3) of the Disclosure and Consistency of Cost Accounting Practices clause provide for adjustment of contract price under certain circumstances. The cognizant contracting officer (ACO) is responsible for obtaining the contractor's cost impact proposal and for the conduct of all negotiations of such adjustments to all Government prime contracts.

(b) *Failure to comply with cost accounting standards requirements.* Paragraph (a)(5) of the Cost Accounting Standards clause and paragraph (a)(4) of the Disclosure and Consistency of Cost Accounting Practices clause provide for an adjustment of the prime contract price or cost allowance, as appropriate, if the contractor or a subcontractor fails to comply with an applicable cost accounting standard or fails to follow any disclosed accounting practice and such failure results in any increased cost paid by the Government. The cognizant contract auditor shall be responsible for the conduct of audits as necessary to disclose such failures. The cognizant contracting officer (ACO) shall negotiate all resultant prime contract adjustments, including applicable interest.

(c) *Conduct of negotiations of defense and nondefense contracts and execution of supplemental agreements.* The cognizant contracting officer shall require the contractor to include, in the cost impact proposal, proposals for adjustment to CAS covered subcontracts. Negotiations pursuant to paragraphs (a) and (b) of this section shall be on behalf of all Government agencies including, but not limited to, DOD, NASA, DOE, and GSA. As part of these negotiations the cognizant contracting officer shall also determine the affect of the change in accounting practices on each CAS covered subcontract that is being performed by the contractor. The cognizant contracting officer shall invite purchasing offices to participate in negotiations of adjustments when the price of any of their contracts will be increased or decreased by $10,000 or more. At the conclusion of negotiations the following actions shall be taken by the cognizant contracting officer:

* * * * *

k. Section 1-3.1208 is amended by revising paragraph (b) and adding paragraph (c), as follows:

§ 1-3.1208 *Contract administration for CASB matters by agencies other than DOD.*

* * * * *

(b) The cognizant contracting officer for a given contractor shall be a contracting officer so designated by the predominant interest agency. In the event a DOD cognizant contracting officer assignment has not been made, the predominant interest agency shall be the agency making the largest dollar volume of CAS covered national defense and nondefense prime contract and subcontract awards to the contractor during his cost accounting period prior to award of the contract. During negotiations of new Government prime contracts or subcontracts, any firm subject to CASB regulations shall be required to inform the awarding agency (in the case of a prime contract) or the higher-tier contractor (in the case of subcontracts) of the identity of his predominant interest agency and whether a cognizant contracting officer assignment exists.

(c) Within 30 days of the execution of any new prime contract or subcontract subject to CAS, whether national defense or nondefense, the agency making the award of the prime contract or the contractor awarding the subcontract shall furnish written notification thereof (requesting contract administration for CASB matters) to the cognizant contracting officer of the predominant interest agency for the prime contractor or subcontractor. Such notification shall contain at least the following:

(1) A copy of the contract or subcontract. The following notation shall be inserted in bold print on the face of the document.

"FOR COST ACCOUNTING STANDARDS ADMINISTRATION ONLY"

(2) The names and addresses of proposed subcontractors or lower tier subcontractors involving procurements estimated to be subject to cost accounting standards requirements.

(3) A request that, if appropriate, he provide notification of the awards to the (i) cognizant contracting officer of any such subcontractor and (ii) cognizant contract auditor for the prime contractor and any such subcontractor(s).

1. Section 1-3.1210 is amended by revising paragraphs (b) and (c), as follows:

§ 1-3.1210 *Cost Accounting Standards Board report.*

* * * * *

(b) Each civilian executive agency shall implement this regulation to ensure that (1) its cognizant contracting officers (if any) collect and report to a designated office for consolidation all of the information required by Items 1 through 6 of the report set forth in paragraph (c) of this § 1-3.1210 and (2) its purchasing activities also provide information to the designated office with respect to Items 6 of the report. If an agency has no cognizant contracting officers, its annual consolidated report to CASB would generally be limited to information from its purchasing activities with respect to Item 6 and 7 of the report.

(c) Composition of report is as follows:

(1) *Format.*

ANNUAL REPORT OF COST ACCOUNTING STANDARDS ACTIVITY FOR CALENDAR YEAR

Agency: _____

1. Disclosure statement reviews for adequacy.

	Initial	Revisions
Statements reviewed		
Statements determined inadequate		

2. Voluntary changes.

Total in process Jan. 1	
Total received during year	
Total completed during year	
Total net costs recovered on completed actions	$

3. Noncompliance determinations.

	Preaward	Performance
Total in process Jan. 1		
Total received during year		
Total completed during year		
Total in process Dec. 31		
Total costs recovered on completed noncompliance actions	$	$

4. Equitable adjustments.

Total in process Jan. 1	
Total received during year	
Total completed during year	
Total in process Dec. 31	
Total increases for completed actions	
Total decreases for completed actions	

5. BCA/court of claims appeals.

Undecided cases:		
BCA docket Nos	Company	$
Court of claims docket Nos	do	
Total		

Settlement

	Amount in dispute	Contractor	Government
Cases decided:			
Docket Nos	$	$	$

6. Suggestions and recommendations for revising CASB standards, rules and regulations.

7. Contracts subject to CAS.

National Defense contracts-full coverage (4 CFR 331)

	Number	Dollars
1a Inventory, start of calendar year		
2a Actions added during year		
3a Actions physically completed during year		
4a Inventory, end of year (1a+2a-3a)		

National Defense contracts-modified coverage (4 CFR 332)

1b Inventory, start of calendar year		
2b Actions added during year		
3b Actions physically completed during year		
4b Inventory, end of year (1b+2b-3b)		

Nondefense contracts-full FPR coverage

1c Inventory, start of calendar year		
2c Actions added during year		
3c Actions physically completed during year		
4c Inventory, end of year (1c+2c-3c)		

Nondefense contracts-modified FPR coverage

1d Inventory, start of calendar year		
2d Actions added during year		
3d Actions physically completed during year		
4d Inventory, end of year (1a+2b-3a)		

Summary-CAS coverage

5 Inventory start of year (1a+1b+1c+1d)		
6 Actions added during year (2a+2b+2c+2d)		
7 Actions physically completed during year (3a+3b+3c+3d)		
8 Inventory, end of year (4a+4b-4c+4d)		

(2) *Special instructions.*

(i) *Disclosure Statement reviews for adequacy.* This portion of the report is designed to show the number of Disclosure Statements from prime and subcontractors that have been reviewed by the cognizant contracting officer (ACO) and the number that were found to be inadequate. Initial submission refers to that which is the first Disclosure Statement submitted by a contractor who was not previously required to disclose. Revised submission refers to substantive changes to a Disclosure Statement submitted by a contractor for whom a current Disclosure Statement is on file in a contract administration office (CAO). Resubmissions will not be counted. Informal discussions with contractors concerning their Disclosure Statements and voluntary corrections will not be reported.

(ii) *Voluntary changes.* Voluntary changes are those changes which are processed in accordance with paragraph (a)(4)(B) of the Cost Accounting Standards clause. Only those cases on which final agreement has been reached on all issues including price adjustments, will be reported as completed.

(iii) *Noncompliance determinations.* The noncompliance determinations re-

ported will be those where the prime or subcontractor has been formally notified of the noncompliance by the ACO in accordance with ASPR 3-1212. For reporting purposes, cases will not be considered closed until the Government and the contractor arrive at a final agreement on all issues, including price adjustments, or the cognizant contracting officer (ACO) has issued a unilateral determination or has withdrawn his determination of noncompliance. "Preaward" refers to determinations on which the noncompliance affects only a contract proposal(s). If a determination involves existing contracts together with proposals or disclosed practices, it shall be reported as a performance determination only.

(iv) *Equitable adjustments.* Only those cases on which the final agreement has been reached will be reported as completed.

(v) *Active BCA/Court of Claims Appeals.* The dollar amounts reported will be total expected recovery on Government contacts rather than token amounts usually cited in disputes. The amounts shown may reflect amounts previously reported in Items 2 through 4 of the report.

(vi) *Suggestions and recommendations for revising CASB standards, rules and regulations.* Recommendations should include information citing the specific improvements to be expected from the proposed changes. If no suggestions are proposed, indicate "none".

(vii) *Contracts subject to cost accounting standards.* To the extent such data are readily available or can be estimated with reasonable accuracy by the agency preparing the report, this portion of the report shall be included to indicate the number and dollar amount of contracts awarded that are subject to cost accounting standards. This portion of the report shall not be required if data on CAS coverage are required to be submitted under the Federal Procurement Data System reporting requirements. In order to generate data reasonably consistent among agencies, a contract number should be counted only when a particular CAS clause is first included in the contract. All contract dollars subject to the clause should be counted, including contract modifications.

m. Section 1-3.1211 is revised, as follows:

§ 1-3.1211 *Waiver of cost accounting standards, rules, and regulations.*

In some instances contactors or subcontractors may refuse to accept all or part of the provisions of the cost accounting standards clauses (§§ 1-3.1204-1 and 1-3.1204-2). If the contracting officer determines that it is impractical to obtain the materials, supplies, or services from any other source, he shall prepare the documentation required by paragraph 331.30(c) of Cost Accounting Standards Board regulations (4 CFR 331.30(c)). Such information shall be forwarded through channels to the head of the agency (see § 1-1.204) or his designee for approval of the proposed waiver with respect to nondefense contracts, to ensure that the contemplated contract otherwise contains provisions adequately protecting the Government's interests, to provide for consistent treatment of such waivers within the agency and as between nondefense and national defense contracts. If a waiver is approved with respect to nondefense contracts, an information copy of such approval and the referenced documentation shall be forwarded to the Cost Accounting Standards Board. On national defense contracts, the head of the agency or his designee (if he supports the proposed waiver) must request such a waiver from the Cost Accounting Standards Board pursuant to 4 CFR 331.30(c).

n. Section 1-3.1212 is amended by revising paragraphs (c)(2), (d), and (h)(2), as follows:

§ 1-3.1212 Administration of noncompliance issues.

* * * * *

(c) * * *

(2) Submit the information required by paragraph (a) of the Administration of Cost Accounting Standards clause (see § 1-3.1204-1(b)).

(d) *Review of contractor change.* Upon receipt of the information required in paragraph (c) of this section indicating agreement with the noncompliance, the cognizant contracting officer shall review the accounting change for adequacy and compliance concurrently in accordance with § 1-3.1205(d). Upon completion of the review indicating that the change is both adequate and in compliance, the contractor shall be notified and requested to submit the cost impact proposal required pursuant to paragraph (b) of the Administration of Cost Accounting Standards clause. The proposal shall be in sufficient detail to permit evaluation and negotiation of the cost impact upon each CAS covered contract and subcontract. It shall contain as a minimum the following information:

(1) Identification of all contracts and subcontracts containing the Cost Accounting Standards clause or the Cost Accounting Standards—Nondefense Contract clause;

(2) If the noncompliance involves Standards 401 or 402, or a failure to comply with disclosed or established practices, identification of all contracts and subcontracts containing the Disclosure and Consistency of Cost Accounting Practices clause or the Consistency of Cost Accounting Practices—Nondefense Contract clause; and

(3) The cost impact on each such contract and subcontract from the date of failure to comply until the noncompliance is corrected.

* * * * *

(h) * * *

(2) If the cognizant contracting officer makes a determination of noncompliance or if the contractor fails to furnish the cost input proposal, the cognizant contracting officer with the assistance of the auditor shall estimate the cost impact of the noncompliance on contracts and subcontracts containing cost accounting clauses;

* * * * *

o. Section 1-3.1213 is amended by revising paragraphs (a), (b), introductory material in (c), (c)(1) and (e)(1), as follows:

§ 1-3.1213 Administration of equitable adjustments for new cost accounting standards.

(a) *Solicitation notice.* The procurement contracting officer shall ensure that the contractor's response to the notice entitled "Additional Cost Accounting Standards Applicable to Existing Contracts Certification" is made known to the cognizant contracting officer (see § 1-3.1208(a)). This may be accomplished by attaching a copy of the response to the copy of the contract provided to the cognizant contracting officer.

(b) *Requirement for equitable adjustment.* Contracts and subcontracts containing full coverage cost accounting standards clauses (see § 1-3.1204-1(a) or § 1-3.1204-2(a)) may require equitable adjustments to comply with new cost accounting standards (see paragraph (a)(4)(A) of the Cost Accounting Standards clause). Such adjustments are limited to contracts and subcontracts awarded prior to the effective date of each new standard. A new standard becomes applicable prospectively to these contracts and subcontracts when a new national defense contract or subcontract containing the Cost Accounting Standards clause is awarded on or after the effective date of such new standards. Contractors are encouraged to submit to the cognizant contracting officer any change in accounting practice in anticipation of complying with a new standard as soon as practicable after the new standard has been finally promulgated by the Cost Accounting Standards Board. Equitable adjustment is limited to those circumstances in which a change in cost accounting practices is required to implement a new standard.

(c) *Review of contractor change.* Upon receipt of information required pursuant to paragraph (a) of the Ad-

ministration of Cost Accounting Standards clause (see § 1-3.1204-1(b)) from the contractor indicating an accounting change is required to comply with a new standard, the cognizant contracting officer shall review the proposed change concurrently for adequacy and compliance in accordance with § 1-3.1205(d). Upon completion of the review indicating that the change is both adequate and in compliance, the contractor shall be notified and requested to submit the cost impact proposal required pursuant to paragraph (b) of the Administration of Cost Accounting Standards clause. The proposal shall be in sufficient detail to permit evaluation and negotiation of the cost impact upon each contract and subcontract containing full coverage cost accounting standards clauses. It shall contain as a minimum the following information:

(1) Identification of each additional standard, together with those contracts and subcontracts containing the Cost Accounting standards clause having an award date prior to the effective date of such standard, and

* * * * *

(e) *Failure to submit cost impact proposal or reach agreement concerning cost impact.* (1) If the contractor does not submit a proposal in the form and time specified or if the parties fail to agree concerning the cost impact, the cognizant contracting officer, with the assistance of the auditor, shall estimate the cost impact on contracts and subcontracts containing full coverage cost accounting standards clauses;

* * * * *

p. Section 1-3.1214 is amended by revising all paragraphs except (d)(2), as follows:

§ 1-3.1214 Administration of voluntary changes.

(a) *Notification of proposed change.* When a contractor who has contracts or subcontracts containing a cost accounting standards clause plans to make a voluntary change to an accounting practice, he must submit the information required by paragraph (a) of the Administration of Cost Accounting Standards clause (see § 1-3.1204-1(b)).

(b) *Review of contractor change.* Upon receipt of the information required in paragraph (a) of this section, the cognizant contracting officer shall review the accounting change concurrently for adequacy and compliance in accordance with § 1-3.1205(d). Upon completion of the review indicating that the change is both adequate and in compliance, the contractor shall be notified and requested to furnish the cost impact proposal required pursuant to paragraph (b) of the Administration of Cost Accounting Standards clause. It shall be in sufficient detail to permit evaluation and negotiation of the cost impact upon each contract and subcontract containing a cost accounting standards clause. It shall contain as a minimum the following information:

(1) Identification of all contracts and subcontracts containing a cost accounting standards clause, and

(2) The effect on each contract and subcontract from the effective date of the proposed change until completion of the contract or subcontract.

(c) *Receipt of cost impact proposal.* Upon receipt of an acceptable proposal from the contractor, the cognizant contracting officer shall promptly analyze the proposal with the assistance of the auditor to determine whether or not the proposed change will result in increased costs being paid by the United States. In considering the proposed adjustments to subcontracts containing a cost accounting standards clause to determine whether increased cost to the United States will result from the change, the cognizant contracting officer shall not consider the effect of the proposed adjustments upon the prime contracts and subcontracts under which the subcontracts were entered into. If the cognizant contracting officer determines that the proposed adjustments will not result in an increase in the aggregate cost to be paid under the contracts and subcontracts containing a cost accounting standards clause he shall promptly negotiate the contract price adjustments pursuant to § 1-3.1207. If the cognizant contracting officer determines that the proposed adjustments will result in an increase in the aggregate cost to be paid under the contracts and subcontracts containing a cost accounting standards clause, he shall so notify the contractor and advise him that the proposed change will not be recognized unless an agreement can be reached which will prevent an increase in the aggregate cost to be paid under such contracts and subcontracts.

(d) *Failure to submit cost impact proposal or reach agreement concerning cost impact.* (1) If the contractor does not submit a proposal in the form and time specified or if the parties fail to agree concerning the cost impact, the cognizant contracting officer, with the assistance of the auditor, shall estimate the cost impact on contracts and subcontracts containing a cost accounting standards clause, and

* * * * *

q. Section 1-3.1219 is revised, as follows:

§ 1-3.1219 *Guidance for implementation.*

This § 1-3.1219 will address specific topics where it has been determined that the contracting community might benefit from such treatment. In addition, the Cost Accounting Standards Board often includes preambles in the FEDERAL REGISTER issue that promulgates rules, regulations, and standards in order to provide readers with historical information and pertinent commentary. These preambles are also included in the looseleaf edition of the CASB Standards, Rules, and Regulations and in Title 4 of the Code of Federal Regulations, both of which are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Temporary requirements or informational guidance may also be published from time to time in the Notices section of the FEDERAL REGISTER as FPR Temporary Regulations or FPR Bulletins. These temporary regulations and bulletins are subsequently distributed to subscribers of the looseleaf edition of the FPR.

r. Section 1-7.103-27 is revised, as follows:

§ 1-7.103-27 *Cost accounting standards.*

(a) *National defense procurements.* Insert the notices set forth in § 1-3.1203-3(a) in solicitations of proposals and the appropriate contract clauses set forth in § 1-3.1204-1 in negotiated contracts in accordance with the provisions of Subpart 1-3.12.

(b) *Nondefense procurements.* Insert the notice set forth in § 1-3.1203-3(b) in solicitations of proposals and the appropriate contract clause set forth in § 1-3.1204-2 in negotiated contracts in accordance with the provisions of Subpart 1-3.12.

s. Section 1-7.203-23 is revised, as follows:

§ 1-7.203-23 *Cost accounting standards.*

(a) *National defense procurements.* Insert the notices set forth in § 1-3.1203-3(a) in solicitations of proposals and the appropriate contract clauses set forth in § 1-3.1204-1 in negotiated contracts in accordance with the provisions of Subpart 1-3.12.

(b) *Nondefense procurements.* Insert the notice set forth in § 1-3.1203-3(b) in solicitations of proposals and the appropriate contract clause set forth in § 1-3.1204-2 in negotiated contracts in accordance with the provisions of Subpart 1-3.12.

t. Section 1-7.303-55 is revised, as follows:

§ 1-7.303-55 *Cost accounting standards.*

(a) *National defense procurements.* Insert the notices set forth in § 1-3.1203-3(a) in solicitations of proposals and the appropriate contract clauses set forth in § 1-3.1204-1 in negotiated

contracts in accordance with the provisions of Subpart 1-3.12.

(b) *Nondefense procurements.* Insert the notice set forth in § 1-3.1203-3(b) in solicitations of proposals and the appropriate contract clause set forth in § 1-3.1204-2 in negotiated contracts in accordance with the provisions of Subpart 1-3.12.

u. Section 1-7.403-50 is revised, as follows:

§ 1-7.403-50 *Cost accounting standards.*

(a) *National defense procurements.* Insert the notices set forth in § 1-3.1203-3(a) in solicitations of proposals and the appropriate contract clauses set forth in § 1-3.1204-1 in negotiated contracts in accordance with the provisions of Subpart 1-3.12.

(b) *Nondefense procurements.* Insert the notice set forth in § 1-3.1203-3(b) in solicitations of proposals and the appropriate contract clause set forth in § 1-3.1204-2 in negotiated contracts in accordance with the provisions of Subpart 1-3.12.

v. Section 1-7.603-27 is revised, as follows:

§ 1-7.603-27 *Cost accounting standards.*

(a) *National defense procurements.* Insert the notices set forth in § 1-3.1203-3(a) in solicitations of proposals and the appropriate contract clauses set forth in § 1-3.1204-1 in negotiated contracts in accordance with the provisions of Subpart 1-3.12.

(b) *Nondefense procurements.* Insert the notice set forth in § 1-3.1203-3(b) in solicitations of proposals and the appropriate contract clause set forth in § 1-3.1204-2 in negotiated contracts in accordance with the provisions of Subpart 1-3.12.

w. Section 1-7.703-22 is revised, as follows:

§ 1-7.703-22 *Cost accounting standards.*

(a) *National defense procurements.* Insert the notices set forth in § 1-3.1203-3(a) in solicitations of proposals and the appropriate contract clauses set forth in § 1-3.1204-1 in negotiated contracts in accordance with the provisions of Subpart 1-3.12.

(b) *Nondefense procurements.* Insert the notice set forth in § 1-3.1203-3(b) in solicitations of proposals and the appropriate contract clause set forth in § 1-3.1204-2 in negotiated contracts in accordance with the provisions of Subpart 1-3.12.

7. *Comments.* Comments may be submitted to the General Services Administration; Director, Federal Procurement Regulations Staff (FV); Crystal Square 5, Room 1107; Washington D.C. 20406; on or before June 5, 1978. All comments will be carefully considered prior to codification in the Federal Procurement Regulations.

JAY SOLOMON,
Administrator of General Services.

MARCH 29, 1978.

[FR Doc. 78-8767 Filed 4-3-78; 8:45 am]

[4110-03]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[Docket No. 78N-0062]

AFLATOXIN-CONTAMINATED CORN

Limited Exemption From Blending Prohibition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This document grants certain States a limited exemption from a blending prohibition. This exemption applies to aflatoxin-contaminated corn. The blended corn must not exceed an action level and may be used only in certain animal feed. This action is taken to avert a substantial adverse impact on the national food supply.

EFFECTIVE DATES: April 4, 1978; expiration date: This exemption shall remain in effect until January 1, 1979.

FOR FURTHER INFORMATION CONTACT:

Caesar A. Roy, Bureau of Foods (HFF-310), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C Street SW., Washington, D.C. 20204, 202-245-1186.

SUPPLEMENTARY INFORMATION: The Food and Drug Administration is establishing a limited exemption to its prohibition against blending a food (corn) containing a poisonous or deleterious substance (aflatoxin) in amounts above the tolerance or action level (20 parts per billion (20 ppb)) with less contaminated food to obtain a mixture within the tolerance or action level. This exemption applies to corn harvested in 1977 in the States of Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, and Virginia. The blending must be done in accordance with a technically feasible plan approved by the FDA Regional Office in Atlanta, Ga., before blending operations begin. The exemption does not apply to corn that contains more than 20 ppb aflatoxin if the corn has been shipped in interstate commerce. The blended corn must not exceed the action level of 20 parts per billion (ppb) aflatoxin and must be used only for animal feed for mature poultry and swine, and mature, non-milk-producing beef cattle. This exemption does not apply to corn or mixed feeds used for rations for dairy animals, or starter rations for very young animals, or to corn for human consumption.

Corn that contains aflatoxin in excess of the established FDA action level of 20 parts per billion (ppb) is an adulterated food under section 402(a)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342(a)(1)). Use of an adulterated food as an ingredient in another food ordinarily causes the finished food to be deemed adulterated, even if the finished product itself does not violate an established tolerance or action level.

The action level for aflatoxin applies only to unavoidable contamination of corn. Intentional blending of a violative article with an uncontaminated article is wholly avoidable and not authorized by the action level. Any aflatoxin contamination that can be shown to have occurred as a result of inadequate postharvest drying of faulty storage will be considered avoidable and therefore, not authorized by the tolerance.

Section 509.8 (21 CFR 509.8), issued in the FEDERAL REGISTER of September 30, 1977 (42 FR 52822), provides for exemptions from established action levels if the Commissioner of Food and Drugs determines that (1) based on all available evidence, the food is safe for consumption, and (2) destruction or diversion of the food involved would result in a substantial adverse impact on the national food supply.

The Commissioner has reviewed all available evidence concerning the safety of aflatoxin in feed corn and has determined that the limited exemption to permit blending established by this notice will not result in any perceivable increased risk to the health of mature poultry and swine and mature non-milk-producing beef cattle fed such corn, or to humans consuming edible tissues derived from those animals.

The Commissioner has determined that the destruction or diversion of corn that would be required by the continued prohibition of blending of the subject feed corn would result in a substantial impact on the national food supply.

Based on data recently compiled by FDA, over half the 1977 corn crop in parts of the Southeast United States (Alabama, Georgia, Florida, Mississippi, North Carolina, South Carolina, and Virginia) may exceed the 20 ppb action level and thus may not be shipped in interstate commerce. Since it may be difficult for farmers in this area to find adequate supplies of corn for use in feeding animals if the law is enforced fully, the Commissioner has determined that he will not recommend regulatory action for violation

of the Federal Food, Drug, and Cosmetic Act with respect to blending of such corn for use as animal feed if conditions of this notice are met.

It is anticipated that permitting the blending of feed corn under the terms of the exemption from the 20 ppb action level stated in this notice will increase the marketable feed corn crop in the seven States where blending will be allowed. This increase may be as much as 111.4 million bushels, valued at 235.5 million dollars at current support prices.

FDA has advised the States in the southeastern United States that intrastate corn containing up to 100 ppb aflatoxin may safely be used for animal feed for mature poultry and swine, and mature, non-milk-producing beef cattle if the State can ensure that the corn will not be diverted to other uses. Some States have told FDA that they cannot monitor the use of the corn closely enough to ensure that the limitation is adhered to; FDA has then advised the State not to permit corn containing more than 20 ppb aflatoxin to be used for any purpose. The exemption stated in this notice requires that the corn contain no more than 20 ppb after blending rather than 100 ppb because FDA cannot monitor the flow of corn in interstate commerce to the extent necessary to ensure that the corn is used in accordance with the terms of the exemption. Permitting corn containing up to 100 ppb aflatoxin to be shipped in interstate commerce would present an unreasonable risk that the corn would be used to feed dairy animals or very young animals, or that it would be used for food for human consumption.

The Commissioner is not altering the agency's longstanding position that it is ordinarily unlawful to blend corn containing aflatoxin above the action level with less contaminated corn. But the Commissioner is permitting blending on a one-time basis only because of the severity of this emergency situation.

Therefore, the Commissioner gives notice pursuant to § 509.8 (21 CFR 509.8) of the following exemption from the action level for aflatoxin:

NOTICE OF EXEMPTION

(a) The Food and Drug Administration will not recommend regulatory action against corn containing aflatoxin for violation of the Federal Food, Drug, and Cosmetic Act with respect to blending of corn containing aflatoxin in excess of 20 ppb if all the following conditions are met:

1. The contaminated corn was harvested in 1977 in the States of Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, and Virginia.

2. Aflatoxin contamination did not result from improper agricultural, storage, shipping, or manufacturing practices.

3. A technically feasible plan for blending has been approved by the FDA Regional Office in Atlanta, Georgia, before blending operations begin. It must be demonstrated that the blending plan can reasonably be expected to result in a finished lot of corn containing not more than 20 ppb of aflatoxin. The blending must be accomplished under Federal or State supervision, and the finished lot must be approved by Federal or State authorities before shipment in interstate commerce. It must be demonstrated to the satisfaction of the supervising Federal or State authority that the aflatoxin level of the blended lot is not above 20 ppb.

4. The aflatoxin-contaminated corn must not have been shipped in interstate commerce prior to FDA approval of the blending plan. (If FDA were to approve blending of corn after shipment in interstate commerce, there would be an unacceptable risk that some persons might ship contaminated corn in interstate commerce and blend only if the contaminated shipments were detected by Federal or State authorities).

5. The corn containing aflatoxins in excess of 20 ppb is mixed with noncontaminated corn resulting in a mixture containing no more than 20 ppb total aflatoxins.

6. The blended lot must be offered for use only for animal feed for mature poultry and swine and for non-milk-producing beef cattle. It may not be used to feed dairy animals or very young animals, and it may not be used for human consumption.

(b) In all other cases, the existing 20 ppb action level for aflatoxin contamination will be applied.

Assessments of safety and impact on the national food supply, including references and supporting data upon which this notice is based, are on file with the Hearing Clerk (HFC-20), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

Public comment is invited on any or all aspects of this notice and the Commissioner's determinations herein. Comments may be sent to the Hearing Clerk (address above) and will be received while this notice remains in effect.

This notice will be in effect until January 1, 1979.

Dated: March 24, 1978.

JOSEPH P. HILE,
Acting Commissioner,
Food and Drug Administration.

[FR Doc. 78-8586 Filed 3-29-78; 10:06 am]

[4110-03]

[Docket No. 78N-0067]

GUIDES FOR NATURALLY OCCURRING AND ACCELERATOR-PRODUCED RADIOACTIVE MATERIALS (NARM)

Notice of Availability

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: A document entitled "Guides for Naturally Occurring and Accelerator-Produced Radioactive Materials (NARM)," developed by the Conference of Radiation Control Program Directors, is now complete and copies have been distributed to State radiation control agencies. The NARM guides were developed in cooperation with the Bureau of Radiological Health of the Food and Drug Administration (FDA), the Environmental Protection Agency, and the Nuclear Regulatory Commission, to assist the States in establishing uniform standards for evaluating the safety of NARM sources and products and for distributing NARM products.

ADDRESSES: Additional copies of the NARM guides are available for public examination in the office of the Hearing Clerk, Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857. Requests for single copies of the NARM guides should be made in writing to the Bureau of Radiological Health (HFX-300), Food and Drug Administration, 5600 Fishers Lane, Rockville, Md. 20857.

FOR FURTHER INFORMATION CONTACT:

Allan C. Tapert, Bureau of Radiological Health (HFX-300), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-1365.

SUPPLEMENTARY INFORMATION: The manufacture, distribution, and use of NARM sources and devices are not covered by the Atomic Energy Act of 1954, as amended, and therefore are not regulated by the U.S. Nuclear Regulatory Commission. Rather, the regulation of NARM has been left to the discretion of each State, and the degree of regulation for NARM consequently varies from State to State.

The Food and Drug Administration, Department of Health, Education, and Welfare, under the broad responsibility conferred by the Public Health Service Act (42 U.S.C. 241, 243) encourages cooperation among the States in protecting the public against specified radiation hazards. The NARM guides facilitate this cooperation and are also compatible with existing guidance and procedures devel-

oped by the U.S. Nuclear Regulatory Commission for other radioactive materials (i.e., source, special nuclear and byproduct materials) and the Environmental Protection Agency, which is responsible for establishing Federal Radiation Guidance. In addition, the NARM guides also reflect recommendations and suggestions of the American National Standards Institute and the National Council on Radiation Protection and Measurements.

The purpose of the NARM guides is to assist the States in the control of radioactive materials by providing the basis of a program for standardizing the safety evaluation and distribution of NARM sources and products through the cooperative efforts of the states and the Bureau of Radiological Health, FDA. The NARM guides are intended for use in conjunction with the Radioactive Materials Reference Manual and the Suggested State Regulations for Control of Radiation (SSRCR). A copy of the Manual and the SSRCR have been placed on file with the Hearing Clerk. The guides also assist manufacturers, assemblers, and distributors in matters of radiation safety for NARM sources and devices.

The NARM guides provide evaluative criteria for the following categories of sources and products:

Guide number and guide title

1—Calibration and Reference Sources Containing Radium-226 for Distribution to Persons Generally Licensed Pursuant to C.22(g), SSRCR.
2—Sealed Sources.
3—Gas and Aersol Detectors for Distribution to Persons Exempt from Regulation Pursuant to C.4(c)(3), SSRCR.
4—Measuring, Gauging, or Controlling Devices.
5—Radioactive Material for Distribution to Persons Exempt from Regulation Pursuant to c.4(b), SSRCR.
6—Static Elimination and Ion Generating Devices.
7—Radioluminous Products.
8—Electronic and Electical Devices.
9—Leak Test Kits and Services.
10—Medical Sources.
11—Radiopharmaceuticals.
12—In Vitro Test Kits.

An introductory NARM guide has been prepared to provide users of the specific guides with background information and general information on their use. The NARM guides also contain a section entitled "Rationale," which explains the bases and approaches of the task force that prepared the specific guides.

During the development stage of these guides, drafts were sent for review and comments, and for informational purposes, to State and Federal agencies that have an interest and responsibilities in radiation control. It is anticipated that the NARM guides will be reviewed annually by representatives of the Conference of Radiation Control Program Directors and appropriate Federal agencies and updated as necessary.

Interested persons are invited to submit written comments and recommendations regarding this document, identified with the docket number appearing in the document heading, to the Hearing Clerk (HFC-20), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857. Each recommendation should be supported by appropriate rationale and background data that clearly establish the administrative, scientific, technical, and public health bases for the recommendation. Any written comments or suggestions received about this matter will be collated and kept on file for consideration by those individuals given responsibility for review and revision of the NARM Guides.

Dated: March 27, 1978.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc. 78-8587 Filed 4-3-78; 8:45am]

[4110-03]

Food and Drug Administration

QUALITY ASSURANCE FOR BIORESEARCH STUDIES

Memorandum of Agreement With the Environmental Protection Agency

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has executed an Interagency Agreement with the Environmental Protection Agency (EPA), Washington, DC formalizing an agreement by which the FDA will inspect toxicological testing laboratories and audit pesticide toxicity test reports submitted to EPA to support pesticide registrations. The agreement also provides for the sharing of information concerning active investigations and any legal or administrative actions being considered against laboratories covered under this agreement.

DATE: The agreement became effective March 10, 1978.

FOR FURTHER INFORMATION CONTACT:

Ernest L. Brisson, Office of the Associate Commissioner for Compliance (HFC-4), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-2390.

SUPPLEMENTARY INFORMATION: Pursuant to the notice published in the FEDERAL REGISTER of October 3, 1974 (39 FR 35697) stating that future memoranda of understanding and agreements between FDA and others would be published in the FEDERAL REGISTER, the Commissioner of Food and Drugs is issuing the following memorandum of agreement:

INTERAGENCY AGREEMENT BETWEEN THE U.S. ENVIRONMENTAL PROTECTION AGENCY, OFFICE OF PESTICIDE PROGRAMS AND THE U.S. DEPARTMENT OF HEALTH, EDUCATION AND WELFARE, FOOD AND DRUG ADMINISTRATION

I. PURPOSE

This agreement provides for the auditing by the Food and Drug Administration (FDA) of selected pesticide toxicity test reports and laboratory records to enable the Environmental Protection Agency (EPA) to determine whether the testing was properly performed and whether the test reports fully and accurately reflect the test procedures.

This agreement is consistent with the Agreement among the U.S. Consumer Product Safety Commission, the U.S. Environmental Protection Agency, the Food and Drug Administration and the Occupational Safety and Health Administration which is a statement of principle to make the most efficient use of resources to achieve consistent regulatory policy and improve the protection of the public health and environment.

II. SCOPE OF WORK

The Environmental Protection Agency (EPA) is responsible for setting tolerances for pesticide residues in or on raw agricultural commodities and processed foods under the Federal Food, Drug and Cosmetic Act (21 U.S.C. 346 and 348) and for registering pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq). EPA regulatory decisions on such matters are based in part on the results of toxicological testing performed by or for registration applicants and tolerance petitioners. Therefore, it is essential that such testing provide an objective and reliable basis for decision-making. An EPA determination that testing was deficient or a test report inadequate may lead to regulatory action; accordingly, such determinations must be well founded and fully documented. This agreement which provides for FDA auditing of selected toxicological test reports and related laboratory records, will enable EPA to determine: (1) Whether the testing was performed in accordance with the test protocols, (2) whether any reported deviations may have affected the reliability of the test results, and (3) whether the test reports fully and accurately reflected the test procedures and results. These audits will be per-

formed by making on-site visits of the toxicological laboratories which conducted the tests. Scientific support for the conduct of EPA directed audits will be provided from EPA scientific staff. This agreement is limited to coverage of laboratories within the United States.

III. EXCHANGE OF INFORMATION

Each agency will exchange information concerning active investigations, regulatory correspondence and legal or administrative actions being considered against any laboratory covered under this agreement.

IV. FDA'S RESPONSIBILITIES

1. *Audits.*—FDA will provide EPA with twenty (20) supported man-years of effort of which eleven (11) are operational investigative manyears, translating into approximately seventy (70) inspectional visits per fiscal year. Each inspectional visit may include a detailed audit of one or more studies to determine whether the final laboratory report submitted to EPA or predecessor agencies is accurately reflective of the raw data, and whether the testing was performed in a manner that did not involve errors or practices that may have adversely affected the validity of the study and whether the testing was performed in accordance with the protocol submitted to EPA.

2. *Follow-up audits.*—In some cases, a repeat visit to as labratory will be necessary as part of EPA's follow-up of an "action-indicated" audit. These inspection visits will be charged against the 20 manyears of investigative support which FDA will provide to EPA.

3. *Compliance audits.*—On occasion, it may be necessary to perform audits at a laboratory which is not scheduled to be visited during a given fiscal quarter. FDA will perform these audits upon request within constraints of FDA program priorities and availability of trained regional personnel. The audit will be charged against the 20 manyears of investigative support which FDA will provide to EPA.

4. *Inspection visits to facilities which test solely pesticides.*—FDA will perform audits for EPA at laboratories which do not strictly come under FDA's purview (*viz.* laboratories which test only pesticides) or other toxic substances not regulated by FDA. FDA investigators will be delegated the authority to review records under Sections 8 and 22 of FIFRA. Since FIFRA contains no explicit laboratory inspection authority, FDA investigators will not be able to compel entry into these laboratories.

5. *Audit reporting.* FDA will provide EPA with a report for each study audited, which will list discrepancies noted between the raw data and the laboratory report submitted to EPA or predecessor agencies. This report will be prepared by the FDA investigator who performed the audit and routed to FDA's Bio-research Monitoring Staff for transmission to EPA's Office of Pesticide Programs. It will be prepared according to the EPA-provided format and will contain a complete description of errors, deficiencies, or questionable practices noted during the audit. These observations will be documented with copies of the original laboratory records pertinent to each case. Where full documentation is not available, the audit report shall explain the circumstances and, if possible, identify the missing documents.

6. *Preliminary review of test reports prior to an audit.*—FDA auditing personnel shall perform a review of the test reports to be audited under this agreement before the on-site audit is initiated. Such reviews shall be designed to familiarize FDA personnel with the contents of the test reports and related documents to be provided by EPA. Special instructions or any items which require particular attention during the audit will be identified by EPA in assembling the audit package.

7. *Responding to scientific review.*—In some cases regulatory and scientific follow-up by EPA may require the FDA investigator who performed the audit to respond to questions and comments which EPA scientific reviewers may have concerning the audit report.

8. *Training.*—(1) FDA personnel who perform audits for EPA will have received training in non-clinical laboratory inspection techniques.

(2) Wherever possible, investigators who perform audits for EPA will have already gained auditing experience within the Bio-research Monitoring Program.

9. *Confidentiality.*—Under various provisions of FFDCA and FIFRA, toxicology data submitted in support of tolerance petitions and registration applications may be considered trade secrets entitled to protection from unauthorized public disclosure. FDA will maintain the confidentiality of all data received as a result of implementing this agreement. Any requests for disclosure of such information received by the FDA under the Freedom of Information Act will be referred to EPA for processing. All documents provided to FDA by EPA for the conduct of the audits will be returned to EPA along with the audit report. A copy of the audit report will be retained by the FDA district office.

10. *GLP inspection reports for pesticide-testing laboratories.*—FDA will provide, upon request from EPA, GLP inspection reports and bureau reviews for pesticide-testing laboratories inspected by FDA. Trade secret information as defined in Section 301(j) of the Food, Drug and Cosmetic Act will be deleted as required by statute wherever such information may appear in such reports.

11. *Scheduling of laboratories to be inspected.*—Upon receipt from EPA of the list of laboratories to be visited during a given fiscal quarter, FDA field offices will schedule those laboratories for an audit visit and advise EPA through FDA's Division of Investigations/EDRO of the date of inspection.

V. EPA'S RESPONSIBILITIES

1. *List of laboratories for coverage.*—EPA will provide FDA with a quarterly listing of laboratories to be visited. This listing is to be provided to FDA at least 30 days in advance of a given quarter to permit proper work planning by the field offices.

2. *Reporting forms.*—EPA will provide FDA with audit methodology and reporting forms for EPA audits.

3. *Studies to be audited.*—EPA will provide FDA with copies of the toxicology test reports to be audited, together with scientific reviews prior to a scheduled EPA audit and including any special instructions which might be appropriate to a particular study to be audited. These documents shall be provided directly to the FDA district office conducting the inspection.

4. *FOI requests.*—EPA will respond to all requests for information received by FDA under the Freedom of Information Act which relates to data audits and inspections performed for EPA by FDA.

5. *Delegation of authority to review records.*—EPA will provide to FDA audit personnel a letter delegating the autority to audit EPA records. This letter will then be furnished to the management of the laboratory at the beginning of the audit.

6. *Notification of registrant.*—Contracts may exist between laboratory and sponsor prohibiting disclosure of raw data by the laboratory without the permission of the sponsor. In order to ensure that the raw data is available to FDA for auditing purposes, the registrant (sponsor of the study) will be notified by telephone of the intent to audit on the working day preceding the scheduled visit. FDA district offices will exercise their own discretion regarding advance notification to the laboratory of the scheduled inspection.

7. *Scientific support.*—EPA will provide a staff scientist to accompany the FDA investigator on all audits conducted under this aggrement. This provision may be waived by EPA whenever scientific support is not deemed necessary for carrying out the objectives of an audit. The FDA investigator is fully responsible for the conduct of the audit and the preparation of the audit report.

8. *Evaluation of audit reports.*—EPA will determine whether discrepancies

listed in the audit reports submitted by FDA inspectors inpact on the validity of the studies. Any administrative or regulatory actions resulting from these audit reports will be the responsibility of EPA.

VI. DURATION OF AGREEMENT

This agreement will become effective on the date of the last signature and shall continue in effect until September 30, 1978, unless modified by mutual written consent of both parties or terminated by either party upon a ninety (90) day advance written notice to the other. This agreement may be renewed by written consent of both parties on a fiscal year basis.

VII. PROJECT OFFICERS

For EPA: Dr. Diana M. Reisa, Office of Pesticide Programs (WH-566), Environmental Protection Agency, Washington, D.C. 20460, telephone 202-755-5632. For FDA: Mr. Ernest L. Brisson, Office of the Associate Commissioner for Compliance (HFC-4), Food and Drug Administration, 5600 Fishers Lane, Rockville, Md. 20857, telephone 301-443-2390.

VIII. FUNDING

No transfer of funds is necessary under this agreement. FDA will provide support costs for the 20 man-years of service allocated to this agreement. FDA personnel assigned to carry out these audits under this agreement will be primarily senior Consumer Safety Officers assigned to field offices.

IX. AUTHORITY

Authority for this Agreement is 31 U.S.C. 686 (The Economy Act) and 7 U.S.C. 136 et seq.

Approved and accepted for the Environmental Protection Agency,

DOUGLAS M. COSTLE,
Administrator.

Dated: March 10, 1978.

Approved and accepted for the Food and Drug Administration,

DONALD KENNEDY,
Commissioner of Food and Drugs.

Dated: February 1, 1978.

Dated: March 29, 1978.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc. 78-8731 Filed 4-3-78; 8:45 am]

[4110-35]

Health Care Financing Administration

STATEWIDE PROFESSIONAL STANDARDS REVIEW COUNCIL OF CONNECTICUT

Request for Nominations for Public Member Positions on the Council

There are four public representatives on the Statewide Council. Membership terms for two of those representatives will expire on October 31, 1978.

Professional Standards Review Organizations (PSROs) review medical care services paid for under the Medicare, Medicaid, and Maternal and Child Health and Crippled Children Services programs in order to assure that those services are medically necessary, of acceptable quality, and provided at the appropriate level of care.

Statewide Councils are established in States that have three or more PSROs to: (1) Help to coordinate PSRO activities and disseminate information among them; (2) assist the Secretary in the development of uniform data gathering and operating procedures; (3) review certain determinations and recommendations made by PSROs as a result of their reviews of medical care; (4) work with doctors and other practitioners and with medical facilities so that they will assure that medical care provided is necessary, appropriate, and of acceptable quality; and (5) assist the Secretary to carry out several of his responsibilities, including the evaluation of the PSROs' review activities and the designation of replacement PSROs when necessary.

Nominees for public representatives are considered on the basis of whether they are: (1) Knowledgeable about health care provided in Connecticut under the Medicare, Medicaid, and Maternal and Child Health and Crippled Children Services programs;

(2) Willing and able to represent the interests of the public; and

(3) Willing and able to discharge the responsibilities of membership in the Statewide Council.

Special consideration will be given to qualified individuals who are not affiliated with: (1) Organizations and groups that must, under law, be represented on the Council (PSROs and physician groups); or

(2) Organizations and groups that are represented on the Council's Advisory Group (hospitals and other health care facilities and health care practitioners other than physicians).

Please include biographical data which demonstrate each nominee's qualifications, particularly their knowledge of health care in the State and their willingness and ability to represent the interests of the public. Persons or organizations may submit nominations to:

John D. Kennedy, Acting Regional Administrator, Health Care Financing Administration, Room 1309, John F. Kennedy Federal Building, Boston, Mass. 02203.

After consideration of all nominations received within 60 days of this Notice, the Secretary will appoint two new public representatives.

For further information about the nature and functions of the Council and the role of public members in Council activities, please call the Office of the Regional Administrator, HCFA, 617-223-6871.

Dated: March 29, 1978.

ROBERT A. DERZON,
Administrator.

[FR Doc. 78-8775 Filed 4-3-78; 8:45 am]

[4110-35]

STATEWIDE PROFESSIONAL STANDARDS REVIEW COUNCIL OF MARYLAND

Request for Nominations for Public Member Positions on the Council

There are four public representatives on the Statewide Council. A vacancy was recently created by the resignation of a public representative. Also, membership terms for two additional representatives will expire on September 30, 1978.

Professional Standards Review Organizations (PSROs) review medical care services paid for under the Medicare, Medicaid, and Maternal and Child Health and Crippled Children Services programs in order to assure that those services are medically necessary, or acceptable quality, and provided at the appropriate level of care.

Statewide Councils are established in States that have three or more PSROs to: (1) Help to coordinate PSRO activities and disseminate information among them; (2) assist the Secretary in the development of uniform data gathering and operating procedures; (3) review certain determinations and recommendations made by PSROs as a result of their reviews of medical care; (4) work with doctors and other practitioners and with medical facilities so that they will assure that medical care provided is necessary, appropriate, and of acceptable quality; and (5) assist the Secretary to carry out several of his responsibilities, including the evaluation of the PSROs' review activities and the designation of replacement PSROs when necessary.

Nominees for public representatives are considered on the basis of whether they are: (1) Knowledgeable about health care provided in Maryland under the Medicare, Medicaid, and Maternal and Child Health and Crippled Children Services programs;

(2) Willing and able to represent the interests of the public; and

(3) Willing and able to discharge the responsibilities of membership in the Statewide Council.

Special consideration will be given to qualified individuals who are not affiliated with: (1) Organizations and groups that must, under law, be represented on the Council (PSRO and physician groups); or

(2) Organizations and groups that are represented on the Council's Advisory Group (hospitals and other health care facilities and health care practitioners other than physicians).

Please include biographical data which demonstrate each nominee's qualifications, particularly their knowledge of health care in the State and their willingness and ability to represent the interests of the public. Persons or organizations may submit nominations to:

Everette F. Bryant, Regional Administrator, Health Care Financing Administration, Post Office Box 7760, Room 3111, Philadelphia, Pa. 19101.

After consideration of all nominations received within 60 days of this Notice, the Secretary will appoint three new public representatives.

For further information about the nature and functions of the Council and the role of public members in Council activities, please call the Office of the Regional Administrator, HCFA, 215-596-1351.

Dated: March 29, 1978.

ROBERT A. DERZON,
Administrator.

[FR Doc. 78-8776 Filed 4-3-78 8:45 am]

[4110-35]

STATEWIDE PROFESSIONAL STANDARDS REVIEW COUNCIL OF MASSACHUSETTS

Request for Nominations for Public Member Positions on the Council

There are four public representatives on the Statewide Council. Membership terms for two of those representatives will expire on September 30, 1978.

Professional Standards Review Organizations (PSRO's) review medical care services paid for under the Medicare, Medicaid, and Maternal and Child Health and Crippled Children Services programs in order to assure that those services are medically necessary, of acceptable quality, and provided at the appropriate level of care.

Statewide Councils are established in States that have three or more PSRO's to: (1) Help to coordinate PSRO activities and disseminate information among them; (2) assist the Secretary in the development of uniform data gathering and operating procedures; (3) review certain determinations and recommendations made by PSRO's as a result of their reviews of medical care; (4) work with doctors and other practitioners and with medical facilities so that they will assure that medical care provided is necessary, appropriate, and of acceptable quality; and (5) assist the Secretary to carry out several of his responsibilities, including the evaluation of the PSRO's review activities and the designation of replacement PSRO's when necessary.

Nominees for public representatives are considered on the basis of whether they are:

(1) Knowledgeable about health care provided in Massachusetts under the Medicare, Medicaid, and Maternal and Child Health and Crippled Children Services programs;

(2) Willing and able to represent the interests of the public; and

(3) Willing and able to discharge the responsibilities of membership in the Statewide Council.

Special consideration will be given to qualified individuals who are not affiliated with:

(1) Organizations and groups that must, under law, be represented on the Council (PSRO's and physician groups); or

(2) Organizations and groups that are represented on the Council's Advisory Group (hospitals and other health care facilities and health care practitioners other than physicians).

Please include biographical data which demonstrate each nominee's qualifications, particularly their knowledge of health care in the State and their willingness and ability to represent the interests of the public. Persons or organizations may submit nominations to:

John D. Kennedy, Acting Regional Administrator, Health Care Financing Administration, Room 1309, John F. Kennedy Federal Building, Boston, Mass. 02203.

After consideration of all nominations received within 60 days of this Notice, the Secretary will appoint two new public representatives.

For further information about the nature and functions of the Council and the role of public members in Council activities, please call the Office of the Regional Administrator, RCFA, 617-223-6871.

Dated: March 29, 1978.

ROBERT A. DERZON,
Administrator.

[FR Doc. 78-8777 Filed 4-3-78; 8:45 am]

[4110-35]

STATEWIDE PROFESSIONAL STANDARDS REVIEW COUNCIL OF NEW YORK

Request for Nominations for Public Member Positions on the Council

There are four public representatives on the Statewide Council. Membership terms for two of those representatives will expire on September 30, 1978.

Professional Standards Review Organizations (PSRO's) review medical care services paid for under the Medicare, Medicaid, and Maternal and Child Health and Crippled Children Services programs in order to assure that those services are medically necessary, of acceptable quality, and provided at the appropriate level of care.

Statewide Councils are stablished in States that have three or more PSRO's to: (1) Help to coordinate PSRO activities and disseminate information among them; (2) assist the Secretary in the development of uniform data gathering and operating procedures; (3) review certain determinations and recommendations made by PSRO's as a result of their reviews of medical care; (4) work with doctors and other practitioners and with medical facilities so that they will assure that medical care provided is necessary, appropriate, and of acceptable quality; and (5) assist the Secretary to carry out several of his responsibilities, including the evaluation of the PSROs review activities and the designation of replacement PSRO's when necessary.

Nominees for public representatives are considered on the basis of whether they are:

(1) Knowledgeable about health care provided in New York under the Medicare, Medicaid, and Maternal and Child Health and Crippled Children Services programs;

(2) Willing and able to represent the interests of the public; and

(3) Willing and able to discharge the responsibilities of membership in the Statewide Council.

Special consideration will be given to qualified individuals who are not affiliated with:

(1) Organizations and groups that must, under law, be represented on the Council (PSRO's) and physician groups); or

(2) Organizations and groups that are represented on the Council's Advisory Group (hospitals and other health care facilities and health care practitioners other than physicians).

Please include biographical data which demonstrate each nominee's qualifications, particularly their knowledge of health care in the State and their willingness and ability to represent the interests of the public. Persons or organizations may submit nominations to:

William Toby, Regional Administrator, Health Care Financing Administration, 26 Federal Plaza, Room 3811, New York, N.Y. 10007.

After consideration of all nominations received within 60 days of this Notice, the Secretary will appoint two new public representatives.

For further information about the nature and functions of the Council and the role of public members in Council activities, please call the Office of the Regional Administrator, MCFA, 212-264-4488.

Dated: March 29, 1978.

ROBERT A. DERZON,
Administrator.

[FR Doc. 78-8778 Filed 4-3-78; 8:45 am]

[4110-35]

Health Care Financing Administration

PROPOXYPHENE HCL AND PROPOXYPHENE HCL w/APC

Delay in Effective Date for Final Maximum Allowable Cost Determinations

On February 24, 1978, the Health Care Financing Administration published in the FEDERAL REGISTER (43 FR 7714) a Notice of Final Maximum Allowable Cost Determinations for Tetracycline HCl, Propoxyphene HCl w/ APC, and Chlordiazepoxide HCl to be effective on April 10, 1978.

The effective date for the maximum allowable cost determinations for tetracycline HCl and chlordiazepoxide HCl remains April 10, 1978. The effective date for the maximum allowable cost determinations for propoxyphene HCl and propoxyphene HCl w/APC is delayed until April 24, 1978.

Dated: March 31, 1978.

VINCENT R. GARDNER,
Chairman, Pharmaceutical Reimbursement Board.

[FR Doc. 78-8993 Filed 4-3-78; 8:45 am]

[4110-84]

Health Services Administration

FEDERAL ADVISORY COMMITTEE

Filing of Annual Report

Notice is hereby given that pursuant to section 13 of Pub. L. 92-463, the Annual Report for the following Health Services Administration Federal Advisory Committee has been filed with the Library of Congress: Interagency Committee on Emergency Medical Services.

Copies are available to the public for inspection at the Library of Congress, Special Forms Reading Room, Main Building, or weekdays between 9 a.m. and 4:30 p.m. at the Department of Health, Education, and Welfare, Department Library, North Building, Room 1436, 330 Independence Avenue SW., Washington, D.C. 20201, telephone 202-245-6791. Copies may be obtained from Mr. Lee Shuck, Emergency Medical Services, Room 11-64D, 6525 Belcrest Road, Hyattsville, Md. 20782, telephone 301-436-6284.

Dated: March 23, 1978.

WILLIAM H. ASPDEN, Jr.,
Associate Administrator for Management.

[FR Doc. 78-8730 Filed 4-3-78; 8:45 am]

[4110-08]

National Institutes of Health

BLOOD DISEASES AND RESOURCES ADVISORY COMMITTEE

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Blood Diseases and Resources Advisory Committee, National Heart, Lung, and Blood Institute, May 8 and 9, 1978, National Institutes of Health, Building 31, Conference Room 8, Bethesda, Md. 20014.

The entire meeting will be open to the public from 9 a.m. to 5 p.m., May 8, and from 8:30 a.m. to 4:30 p.m., May 9, 1978, to discuss the status of the Blood Diseases and Resources program, needs, and opportunities. Attendance by the public will be limited to space available.

Mr. York Onnen, Chief, Public Inquiries and Reports Branch, National Heart, Lung, and Blood Institute, Building 31, Room 5A03, National Institutes of Health, Bethesda, Md. 20014, phone 301-496-4236, will provide summaries of the meeting and rosters of the committee members.

Dr. Fann Harding, Special Assistant to the Director, Division of Blood Diseases and Resources, National Heart, Lung, and Blood Institute, Building 31, Room 5A04, National Institutes of Health, Bethesda, Md. 20014, phone 301-496-1817, will furnish substantive program information.

Dated: March 29, 1978.

SUZANNE L. FREMEAU,
Committee Management Officer, National Institutes of Health.

[FR Doc. 78-8745 Filed 4-3-78; 8:45 am]

[4110-08]

CARDIOLOGY ADVISORY COMMITTEE

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Cardiology Advisory Committee, National Heart, Lung, and Blood Institute, May 31, 1978, National Institutes of Health, Building 31, Conference Room 7.

The entire meeting will be open to the public from 8:30 a.m. to 5 p.m. Attendance by the public will be limited to space available. Topics for discussion will include initiatives in the Cardiology programs for fiscal year 1979.

Mr. York Onnen, Chief, Public Inquiries and Reports Branch, National Heart, Lung, and Blood Institute, Building 31, Room 5A03, National Institutes of Health, Bethesda, Md. 20014, phone 301-496-4236, will provide summaries of the meeting and rosters of the Committee members.

Don Blount, Ph. D., Acting Associate Director for Cardiology, Division of Heart and Vascular Diseases, National Heart, Lung, and Blood Institute, Federal Building, Room 304, Bethesda, Md. 20014, phone 301-496-1627, will furnish substantive program information.

Dated: March 29, 1978.

SUZANNE L. FREMEAU,
Committee Management Officer, National Institutes of Health.

[FR Doc. 78-8748 Filed 4-3-78; 8:45 am]

[4110-08]

COMMITTEE ON CANCER IMMUNOTHERAPY

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Committee on Cancer Immunotherapy, National Cancer Institute, May 18-19, 1978, Landow Building, Room C-418, Woodmont Avenue, Bethesda, Md. 20014. The meeting will be open to the public on May 18, 1978, from 8:30 a.m. to 9 a.m., to review administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title, 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on May 18, 1978, from 9 a.m. to 6 p.m., and on May 19, from 8:30 a.m. to adjournment, for the review, discussion, and evaluation of individual contract proposals. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information about individuals associated with the proposals.

Mrs. Marjorie F. Early, Committee Management Officer, National Cancer Institute, Building 31, Room 4B43, National Institutes of Health, Bethesda, Md. 20014, 301-496-5708 will provide summaries of the meeting and rosters of committee members, upon request.

Dr. George M. Steinberg, Executive Secretary, National Cancer Institute, Building 10, Room 4B09, National Institutes of Health, Bethesda, Md. 20014, 301-496-1791 will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.395, National Institutes of Health.)

Dated: March 28, 1978.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 78-8747 Filed 4-3-78; 8:45 am]

[4110-08]

EXPERIMENTAL DESIGN SUBGROUP OF THE CLEARINGHOUSE ON ENVIRONMENTAL CARCINOGENS

Cancellation of Meeting

Notice is hereby given of the cancellation of the meeting of the Experimental Design Subgroup of the Clearinghouse on Environmental Carcinogens, National Cancer Institute, National Institutes of Health, April 28, 1978, which was published in the FEDERAL REGISTER on March 7, 1978 (43 FR 9359). This meeting is canceled because there are no agenda items at this time.

Dated: March 29, 1978.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 78-8743 Filed 4-3-78; 8:45 am]

[4110-08]

HOST-PLASMID WORKING

Workshop

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of the Host-Plasmid Working Group sponsored by the Recombinant DNA Molecule Program Advisory Committee at the National Institutes of Health, Building 31C, Conference Room 7, 9000 Rockville Pike, Bethesda, Md. 20014 on April 26, 1978, from 9 a.m. to 5 p.m.

The entire meeting will be open to the public for discussion of EK2 host-vector systems and other matters requiring necessary action by the Working Group. Attendance by the public will be limited to space available.

Dr. William J. Gartland, Executive Secretary, Recombinant DNA Molecule Program Advisory Committee, National Institutes of Health, Building 31, Room 4A52, telephone 301-496-6051, will provide materials to be discussed at the meeting, rosters of committee members, and substantive program information. A summary of the meeting will be available at a later date.

Dated: March 29, 1978.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 78-8741 Filed 4-3-78; 8:45 am]

[4110-08]

RECOMBINANT DNA MOLECULE PROGRAM ADVISORY COMMITTEE

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of the Recombinant DNA Molecule Program Advisory Committee at the National Institutes of Health, Building 31C, Conference Room 8, 9000 Rockville Pike, Bethesda, Md. 20014 on April 27-28, 1978, from 9 a.m. to 5 p.m.

The entire meeting will be open to the public for consideration of: Proposed revisions of NIH Guidelines for Research Involving recombinant DNA Molecules, including:

Report of Working Group on Organisms that Exchange Genetic Information.
Report of U.S.-EMBO Workshop to Assess Risks for Recombinant DNA Experiments Involving the Genomes of Animal, Plant, and Insect Viruses.
Report of Workshop on Risk Assessment of Agricultural Pathogens.
EK2 host-vector systems.
Review of protocols for required containment levels.
Requests for lowering of containment levels on the basis of characterization of clones.
Self-cloning experiments in *Pseudomonas putida.*
Other matters requiring necessary action by the Committee.

Attendance by the public will be limited to space available. Dr. William J. Gartland, Executive Secretary, Recombinant DNA Molecule Program Advisory Committee, National Institutes of Health, Building 31, Room 4A52, telephone 301-496-6051, will provide materials to be discussed at the meeting, rosters of committee members, and substantive program information. A summary of the meeting will be available at a later date.

Dated: March 29, 1978.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 78-8742 Filed 4-3-78; 8:45 am]

[4110-08]

REVIEW OF CONTRACT PROPOSALS

Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of the meetings of committees advisory to the National Cancer Institute.

These meetings will be open to the public to discuss administrative details or other issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92-463, for the review, discussion and evaluation of individual contract proposals, as indicated. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the proposals.

Mrs. Marjorie F. Early, Committee Management Officer, NCI, Building 31, Room 4B43, National Institutes of Health, Bethesda, Md. 20014 (301-496-5708) will furnish summaries of the meetings and rosters of committee members, upon request. Other information pertaining to the meeting can be obtained from the Executive Secretary indicated. Meetings will be held at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Md. 20014, unless otherwise stated.

Name of Committee: Developmental Therapeutics Committee.
Date: May 4, 1978; 9 a.m.
Place: Blair Building, Room 110, 8300 Colesville Pike, Silver Spring, Md. 20910.
Times: Open—May 4, 9 a.m.-9:30 a.m. Closed—May 4, 9:30 a.m.-adjournment.
Closure reason: To review research contract proposals.
Executive Secretary: Dr. J. A. R. Mead, Blair Building, Room 5A03A, National Institutes of Health, 301-427-7263.

(Catalog of Federal Domestic Assistance Number 13.395, National Institutes of Health.)

Name of Committee: Carcinogenesis Program Scientific Review Committee.
Dates: May 11-12, 1978; 8:30 a.m.
Place: Building 31C, Conference Room 9, National Institutes of Health.
Times: Open—May 11, 8:30 a.m.-9 a.m. Closed-May 11, 9 a.m.-5 p.m. May 12, 8:30 a.m.-adjournment.
Closure reason: To review research contract proposals.
Executive Secretary: Dr. Carl E. Smith, Landow Building, Room 8C37, National Institutes of Health, 301-496-4141.

(Catalog of Federal Domestic Assistance Number 13.393 National Institues of Health.)

Name of committee: Committee on Cancer Immunobiology.
Dates: May 15-17, 1978; 7 p.m.
Place: Landow Building, Room C-418, 7910 Woodmont Avenue, Bethesda, Md. 20014.
Times: Open—May 15, 7 p.m.-7:30 p.m. Closed—May 15, 7:30 p.m.-11:30 p.m., May 16, 8:30 a.m.-11:30 p.m., May 17, 8:30 a.m.-adjournment.
Closure reason: To review research contract proposals.
Executive secretary: Mrs. Judith M. Whalen, Building 10, Room 4B17, National Institutes of Health, 301-496-1791.

(Catalog of Federal Domestic Assistance Number 13.396, National Institutes of Health.)

Name of committee: Committee on Cancer Immunodiagnosis.
Dates: May 21-23, 1978; 7 p.m.
Place: Landow Building, Room C418, 7910 Woodmont Avenue, Bethesda, Md. 20014.
Times: Open—May 21, 7 p.m.-7:30 p.m. Closed—May 21, 7:30 p.m.-11:30 p.m., May

22, 8:30 a.m.-11:30 p.m., May 23, 8:30 a.m.-11:30 p.m.
Closure reason: To review research contract proposals.
Executive secretary: Mrs. Judith M. Whalen, Building 10, Room 4B11, National Institutes of Health, 301-496-1791.

(Catalog of Federal Domestic Assistance Number 13.394, National Institutes of Health.)

Name of committee: Combined Modality Committee.
Date: May 24, 1978; 8:30 a.m.
Place: Building 31C, Conference Room 9, National Institutes of Health.
Times: Open—May 24, 8:30 a.m.-9 a.m. Closed: May 24, 9 a.m.-adjournment.
Closure reason: To review research contract proposals.
Executive secretary: Dr. Daniel L. Kisner, Landow Building, Room C808, National Institutes of Health, 310-496-2522.

(Catalog of Federal Domestic Assistance Number 13.395, National Institutes of Health.)

Name of committee: Breast Cancer Task Force Committee.
Dates: May 24-26, 1978; 8:30 a.m.
Place: Building 1, Wilson Hall, National Institutes of Health.
Times: Open—May 24, 8:30 a.m.-adjournment. Closed: May 25, 8:30 a.m.-adjournment. May 26, 8:30 a.m.-adjournment.
Closure reason: To review research contract proposals.
Executive secretary: Dr. D. Jane Taylor, Landow Building, Room 4A22, National Institutes of Health, 301-496-6718.

(Catalog of Federal Domestic Assistance Numbers 13.394, 13.395, 13.396, National Institutes of Health.)

Dated: March 28, 1978.

SUZANNE L. FREMEAU,
Committee Management Officer, National Institutes of Health.

[FR Doc. 78-8744 Filed 4-3-78; 8:45 am]

[4110-08]

REVIEW OF GRANT APPLICATIONS

Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of the meetings of committees advisory to the National Cancer Institute.

These meetings will be open to the public to discuss administrative details or other issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), title 5, U.S. Code and section 10(d) of Pub. L. 92-463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal personal information concerning individuals associated with the applications.

Mrs. Marjorie F. Early, Committee Management Officer, NCI, Building 31, Room 4B43, National Institutes of Health, Bethesda, Md. 20014, 301-496-5708, will furnish summaries of the meetings and rosters of committee members, upon request. Other information pertaining to the meeting can be obtained from the Executive Secretary indicated. Meetings will be held at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Md. 20014, unless otherwise stated.

SUBCOMMITTEE ON CANCER ETIOLOGY AND PREVENTION OF THE CANCER RESEARCH MANPOWER REVIEW COMMITTEE

Date and time: May 10-11, 1978; 9 a.m. to adjournment.
Place: Building 31C, Conference Room 8, National Institutes of Health.
Type of meeting: Closed for the entire meeting.
Closure reason: To review research grant applications.
Executive Secretary: Dr. Leon J. Niemiec, Westwood Building, Room 10A15, National Institutes of Health, 301-496-7803.
(Catalog of Federal Domestic Assistance Number 13.398, National Institutes of Health.)

SUBCOMMITTEE ON DETECTION, DIAGNOSIS, TREATMENT AND RESTORATIVE CARE OF THE CANCER RESEARCH MANPOWER REVIEW COMMITTEE

Date and time: May 10-11, 1978; 9 a.m. to adjournment.
Place: Building 31C, Conference Room 7, National Institutes of Health.
Type of meeting: Closed for the entire meeting.
Closure reason: To review research grant applications.
Executive Secretary: Dr. Leon J. Niemiec, Westwood Building, Room 10A15, National Institutes of Health, 301-496-7803.
(Catalog of Federal Domestic Assistance Number National Institutes of Health 13.398.)

CANCER RESEARCH MANPOWER REVIEW COMMITTEE

Date and time: May 12, 1978; 9 a.m.
Place: Building 31C, Conference Room 7, National Institutes of Health.
Type of meeting: Open: May 12, 9 a.m. to 9:30 a.m. Closed: May 12, 9:30 a.m. to adjournment.
Closure reason: To review research grant applications.
Executive Secretary: Dr. Leon J. Niemiec, Westwood Building, Room 10A15, National Institutes of Health, 301-496-7803.
(Catalog of Federal Domestic Assistance Number 13.398 National Institutes of Health.)

Dated: March 28, 1978.

SUZANNE L. FREMEAU,
Committee Management Officer, National Institutes of Health.

[FR Doc. 78-8746 Filed 4-3-78; 8:45 am]

[4110-08]

CONFERENCE ON SLEEP AND AGE

Notice is hereby given of the Conference on Sleep and Age sponsored by the National Institute on Aging, June 1-2, 1978, in the National Institutes of Health, Bethesda, Md., Building 31, Wing C, Conference Room 6 on June 1, and Conference Room 9 on June 2.

This Conference will be open to the public on June 1 and 2 from 9 a.m. until adjournment. This Conference will discuss the state of knowledge, generate additional research objectives and develop a valid data base for sleep problems in the elderly. Attendance will be limited to space available.

Dr. Betty Pickett, Associate Director, Extramural and Collaborative Research Program, National Institute on Aging, Building 31, Room 5C21A, Bethesda, Md. 20014, phone 301-496-5534 will provide additional information.

Dated: March 29, 1978.

SUZANNE L. FREMEAU,
Committee Management Officer, National Institutes of Health.

[FR Doc. 78-8749 Filed 4-3-78; 8:45 am]

[4110-08]

REPORT ON BIOASSAY OF ANTHRANILIC ACID FOR POSSIBLE CARCINOGENICITY

Availability

Anthranilic acid (CAS 118-92-3) has been tested for cancer-causing activity with rats and mice in the Carcinogeneses Program, Division of Cancer Cause and Prevention, National Cancer Institute. A report is available to the public.

Summary. A bioassay of anthranilic acid for possible carcinogenicity was conducted by administering the test chemical in feed to Fischer 344 rats and B6C3F1 mice.

Groups of 35 rats and 35 mice of each sex were administered anthranilic acid at one of the following doses, either 15,000 or 30,000 ppm for the rats, and either 25,000 or 50,000 ppm for the mice, 5 days per week for 78 weeks, then observed for an additional 26-27 weeks. Matched controls consisted of groups of 15 rats and 15 mice of each sex; pooled controls, used for statistical evaluation, consisted of the matched controls combined with 15 untreated male and 15 untreated female animals of each species from a similar bioassay of another test chemical. Except for the matched-control male mice, all surviving animals in the study were killed at 104-106 weeks. Half of the matched-control male mice, which were accidentally killed at week 12, were excluded from the report; the remaining matched-control males died by week 94.

Mean body weights of the low- and high-dose male and high-dose female rats were lower than those of the corresponding matched controls for the duration of the study. The weights of the low-dose females were similar to

those of the matched controls for the first 45 weeks, after which they declined slightly. The weights of the low-dose male mice were similar to those of the matched controls, while those of the high-dose males and of the low- and high-dose females were slightly lower.

Survival of both treated and matched-control groups of rats of both sexes was high; survival of treated mice of both sexes and of female matched controls, although lower than that of the rats, was sufficient for meaningful statistical analyses of the incidences of tumors.

In rats, a variety of neoplasms were observed in both treated and control animals. Few malignant tumors were found, and no tumors occurred in treated animals in statistically significant incidences when compared with control animals.

In mice, a variety of neoplasms were observed in both treated and control animals. These neoplasms are not uncommon in this strain of mouse, and none occurred in treated animals in statistically significant incidences when compared with control animals.

It is concluded that under the conditions of this bioassay, anthranilic acid was not carcinogenic for either Fischer 344 rats or B6C3F1 mice.

Single copies of the report are available from the Office of Cancer Communications, National Cancer Institute, Building 31, Room 10A21, National Institutes of Health, Bethesda, Md. 20014.

(Catalogue of Federal Domestic Assistance Program No. 13.393, Cancer Cause and Prevention Research.)

Dated: March 27, 1978.

DONALD S. FREDRICKSON,
Director, National Institutes of Health.

[FR Doc. 78-8740 Filed 4-3-78; 8:45 am]

[4110-08]

REPORT ON BIOASSAY OF EMETINE FOR POSSIBLE CARCINOGENICITY

Availability

Emetine (CAS 483-18-1) has been tested for cancer-causing activity with rats and mice in the Carcinogenesis Program, Division of Cancer Cause and Prevention, National Cancer Institute. A report is available to the public.

Summary. A bioassay of emetine, an amebicide and anticancer drug, for possible carcinogenicity was conducted by administering the test material by intraperitoneal injection to Sprague-Dawley rats and B6C3F1 mice.

Groups of 35 rats of each sex were administered emetine at one of two doses, either 0.5 or 1 mg/kg body weight, three times per week for 52 weeks, and then observed for an additional 31 or 32 weeks. Control groups of each sex consisted of 10 untreated rats (untreated controls) and 10 rats injected with buffered saline (vehicle controls). Pooled-control groups, used for statistical evaluation, consisted of the vehicle-control rats of each sex for this study combined with 15 vehicle-control rats of each sex from a similar bioassay of another test chemical. All surviving rats were killed at 83 or 84 weeks.

Initially, groups of 35 mice of each sex were administered emetine at one of two doses, either 3.2 or 6.4 mg/kg body weight (mid- and high-dose), three times per week. Control groups of each sex consisted of 15 untreated mice (untreated controls) and 15 mice injected with buffered saline (vehicle controls). Due to high mortality rates in the initial treated groups, additional groups of 35 mice of each sex were later put on study at 1.6 mg/kg (low-dose), together with 10 untreated-control and 10 vehicle-control mice of each sex. The high-dose males were treated for 28 weeks and the mid- and high-dose females for 40 and 33 weeks, respectively. Mid- and low-dose male mice and low-dose female mice were treated for 52 weeks, and then observed for an additional 20 or 26 weeks. All surviving mice were killed at 78-83 weeks.

Emetine was toxic to male rats at the high dose, to both sexes of mice at the high and mid doses and to a lesser extent at the low dose, as shown by the low survival in these groups. Twenty-six percent of the high-dose male rats and 69 percent of the high-dose female rats, but none of the high- and mid-dose mice of either sex, survived to the end of the study. In the low-dose mice, 30/35 males and 21/35 females lived at least 1 year, and the median time on study was 72 weeks for males and 59 weeks for females.

No tumors ocurred at a statistically significant incidence in treated rats or mice compared with controls; however, it should be noted that in this study, treatment of both species was stopped at week 52 and the studies were terminated by week 83, which is earlier than in current bioassays where animals are treated until termination of the studies at 2 years. In addition, there was poor survival among the treated mice.

It is concluded that the results of this study do not allow evaluation of the possible carcinogenicity of emetine.

Single copies of the report are available from the Office of Cancer Communications, National Cancer Institute, Building 31, Room 10A21, National Institutes of Health, Bethesda, Md. 20014.

(Catalogue of Federal Domestic Assistance Program No. 13.393, Cancer Cause and Prevention Research.)

Dated: March 27, 1978.

DONALD S. FREDRICKSON,
Director, National Institutes of Health.

[FR Doc. 78-8739 Filed 4-3-78; 8:45 am]

[4110-85]

Public Health Service

OFFICE OF THE ASSISTANT SECRETARY FOR HEALTH

Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HA (Office of the Assistant Secretary for Health) of the Statement of Organization, Functions, and Delegations of Authority (38 FR 18571, July 12, 1973, as amended by 42 FR 61317, December 2, 1977, and further amended by 43 FR 1137, January 6, 1978) is amended to refine the organization and functions of the PHS Executive Secretariat, Office of Management; include the Privacy Act, veterans affairs and handicapped program functions in the Office of Management functional statement; and transfer the Legislative Planning and Implementation System and the Major Initiatives Tracking System functions from PHS Executive Secretariat to the Office of Health Programs.

Under *Section HA-20, Functions,* make the following changes:

Amend the statement for the *Office of Management (HAU)* by inserting a new item (10) to read: "(10) provides a focal point for the public on the Privacy Act of 1974, veterans affairs, and programs for the handicapped;" and renumber item (10) to read item (11).

Delete the statements for the *PHS Executive Secretariat (HAU5 through HAU55)* in their entirety and substitute the following:

PHS Executive Secretariat (HAU5). The PHS Executive Secretariat: (1) Monitors activities of interest to the Assistant Secretary for Health and the Office of the Assistant Secretary for Health (OASH), in coordination with OASH staff offices, PHS agencies and regional offices; (2) reports on meetings of the Assistant Secretary for Health and controls action items that result from these meetings; (3) provides substantive reviews of correspondence and action documents involving the Secretary, Assistant Secretary for Health, PHS Deputy Assistant Secretaries, the Executive Officer, PHS, and OASH Special Staff Offices to assure quality and consistency with program plans and established policies; (4) relates directly to the Assistant Secretary for Health, as needed, to assure prompt handling of both Secretarial and PHS action documents and correspondence; (5) assigns, monitors, and controls incoming communications including memoranda, reports,

staff papers, and priority correspondence; (6) interfaces with the Executive Secretariat/OS, providing periodic information regarding the status of Secretarial action items, i.e., projects, reports, correspondence; (7) coordinates committee management activities for PHS; (8) manages the Federal regulations process for PHS, including the coordination and review leading toward the approval of new and revised regulations; (9) clears and controls the timely preparation of congressional reports; and (10) insures that heads of PHS staff offices and agencies are informed of, and given an opportunity to comment on, proposed actions or decisions affecting their organizations or responsibilities.

Health Communications Management Division (HAU56). (1) Controls, monitors and tracks correspondence and action items involving the Secretary, Assistant Secretary for Health, PHS Deputy Assistant Secretaries, the Executive Officer, PHS, and OASH Special Staff Offices; (2) provides substantive reviews of correspondence and action documents to assure quality, responsiveness, timeliness, adequacy of coordination and clearances, clearness and conciseness of presentation, and conformance with established PHS policies; (3) prepares and disseminates reports providing status information on assigned action items/issues; (4) provides agency desk operations for furnishing centralized replies to OS controlled correspondence; (5) coordinates with OASH staff offices and PHS agencies on replies to OS controlled correspondence, including the development of appropriate source materials; (6) provides guidance to PHS on the preparation and management of written communications; (7) provides formal presentations on correspondence processing progress at staff meetings and Management Council Meetings; and (8) provides a files maintenance, storage and retrieval system for internal documents, correspondence, and health reference materials.

Regulations and Committee Control Division (HAU57). (1) Directs the Federal regulations process for PHS, including the coordination and review leading toward the approval of new and revised regulations; (2) develops and monitors implementation of PHS policies and procedures relative to the process for initiating, drafting, and clearing new and revised regulations; (3) coordinates the drafting and clearance of new or revised regulations; (4) brings policy disputes to the Deputy Assistant Secretary for Health—Programs for resolution as needed to assure prompt drafting of regulations; (5) distributes and insures review of notices of proposed rulemaking and final regulations policy impacting general notices; (6) provides technical assistance in the development and implementation of new and revised regulations; (7) provides advice and guidance on the development of FEDERAL REGISTER notices; (8) coordinates the drafting and clearance of FEDERAL REGISTER notices; (9) coordinates committee management activities for PHS, including the charter or abolishment of PHS Advisory Committees and the clearance of nominations or changes in membership; (10) develops guidelines and procedures for the timely preparation and clearance of congressional reports; and (11) clears and controls the preparation of congressional reports.

Amend the functional statement for the *Division of Directives and Authorities Management (HAU25)* by deleting in item (1) the word "and" before item (g), adding a semicolon after the word "management" in item (g), and inserting "and (h) Privacy Act of 1974."

Amend the functional statement for the *Office of Health Programs (HAS)* by deleting the "and" before item (13) and adding "and" following item (13) and following it by a new item (14) to read; "(14) directs the Major Initiatives Tracking System and the Legislative Planning Implementation System to assure the accomplishment of selected health objectives."

Dated: March 27, 1978.

LEONARD D. SCHAEFFER,
Assistant Secretary for Management and Budget.

[FR Doc. 78-8802 Filed 4-3-78; 8:45 am]

[4110-07]

Office of the Secretary

SOCIAL SECURITY ADMINISTRATION

Statement of Organization, Functions and Delegations of Authority

Part S (formerly Part 4) of the Statement of Organization, Functions and Delegations of Authority for the Department of Health, Education, and Welfare contains the Statement of Organization, Functions and Delegations of Authority for the Social Security Administration (SSA). Sections SM.00, SM.10 and SM.20 (formerly included in sections 4-02-00 through 4-02-20 of the SSA Statement, 40 FR 4474-75, dated January 30, 1975) describe the Mission, Organization, Order of Succession and Functions for SSA's Office of Management and Administration (OMA). Sections of the OMA Statement are hereby expanded to reflect a reorganization of OMA's Office of Administrative Appraisal and Planning (OAAP). The purposes of the reorganization are to realign and adjust selected functions and organizations; revise and update OAAP functional information; and change organizational nomenclature for conformance with other SSA components. The new material for OAAP reads as follows:

SEC. SM.10 *Office of Management and Administration*—(Organization).

D. Office of Administrative Appraisal and Planning.

1. Audit Management and Liaison Staff.
2. Division of Management Information.
3. Division of Management Planning and Programs.
4. Division of Management Surveys.
5. Division of Organization Management and Analysis.
6. Division of Program Integrity.

SEC. SM.20. *Office of Management and Administration*—(Functions).

D. The Office of Administrative Appraisal and Planning (OAAP) directs comprehensive SSA management analysis, appraisal and planning programs which include: planning and coordinating SSA audit liaison and evaluation activities; developing and implementing the SSA management information system; establishing and coordinating SSA management planning efforts; conducting ongoing management surveys of SSA components; conducting an SSA organization management and analysis program; developing and coordinating SSA program integrity efforts; conducting an SSA historical research program; and personnel security. OAAP provides SSA liaison with HEW, GAO and other Federal Agencies and various other public and private organizations on matters pertaining to the mission of OAAP. The Office includes the following components and functions:

1. *Audit Management and Liaison Staff (AMLS).*—a. Plans and coordinates SSA involvement with audits planned and conducted by the U.S. General Accounting Office and the HEW Audit Agency, recommending areas for coverage and facilitating the access of audit teams to SSA.

b. Reviews audit reports and provides appropriate SSA response to specific recommendations. Evaluates and recommends SSA commitments to audit recommendations; monitors and evaluates implementation of commitments; prepares progress reports and recommends corrective actions.

c. Monitors and evaluates implementation of internal survey recommendations, prepares progress reports and recommends corrective actions.

2. *Division of Management Information (DMI)*—a. Develops, establishes and maintains data sources for the SSA Management Information Program; develops and implements agency management information policies and procedures; identifies and defines standardized data categories/performance indicators for SSA component management information programs.

b. Designs and establishes a data base system for storing, computing and analyzing information and producing graphic displays.

c. Establishes and maintains a system of analytical and factural management reports to facilitate executive assessment of agencywide operations and organizational effectiveness.

3. *Division of Management Planning and Programs (DMPP).*—a. Establishes and maintains the SSA management planning system; recommends and coordinates development of SSA objectives and plans for Secretarial and Commissioner tracking; monitors and evaluates progress in achieving stated objectives, recommending corrective actions where necessary.

b. Develops and recommends changes in management plans and policies to accommodate legislative and operational changes; participates in SSA administrative planning for implementation of legislation.

c. Conducts special studies and analyses to appraise the effectiveness of management/operational plans and policies and/or to address significant management/operational issues.

d. Maintains and controls the SSA Administrative Directives System and appraises other directives and instructional systems; develops policies and coordinates SSA emergency preparedness planning; administers the SSA reports, committee, and conference management programs.

4. *Division of Management Surveys (DMS).*—a. Directs SSA's Management Survey Program; evaluates selected components' mission, organization, personnel administration, policies, procedures and systems, management practices and resource utilization.

b. Provides SSA management with ongoing objective management appraisals of the effectiveness and efficiency of SSA components.

c. Provides advice and guidance to SSA components in planning and conducting internal management surveys.

5. *Division of Organization Management and Analysis (DOMA).*—a. Develops and conducts an ongoing SSA organization management, analysis and appraisal program; reviews and analyzes proposals to establish or change organizational structures, functional assignments, delegations of authority and senior-level positions.

b. Conducts studies of SSA organizational and functional arrangements and develops plans for assimilating new or fundamentally changed functions into the SSA organizations.

c. Performs unique, broad organization management research and analysis projects that cut across SSSA component lines, are agencywide in scope, and concern organizational and functional arrangements within SSA and/or the relationship of SSA to other HEW components.

d. Conducts an SSA program of developing, analyzing and documenting program and administrative delegations of authority and documentation of organization structures and functions.

6. *Division of Program Integrity (DPI).*—a. Develops and establishes, in coordination with SSA components, program integrity policy for the retirement and survivors insurance, disability insurance, supplemental security income and aid to families with dependent children programs; reviews and evaluates SSA component program integrity activities; monitors corrective action plans for fraud and abuse.

b. Establishes SSA's program integrity reporting requirements; prepares agency reports on program integrity workloads, trends, and progress; acts as control point for referrals made directly by SSA components to the Office of the Inspector General regarding inquiries into alleged employee fraud.

c. Conducts document analyses, an SSA-wide scientific technical service comprised of tests and analyses to determine the authenticity of documents, records, etcs. connected with program administration.

Dated: March 27, 1978.

LEONARD D. SCHAEFFER,
Assistant Secretary for Management and Budget.

[FR Doc. 78-8801 Filed 4-3-78; 8:45 am]

[4210-01]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N-78-859]

SOUTH HOUGHTON LAKE FOREST ESTATES

Hearing

In the matter of South Houghton Lake Forest Estates, Richard A. Bellware, President and Houghton Lake Forest Estates, Inc., Respondent, Docket No. 78-19-IS; OILSR No. 0-2604-26-48.

Pursuant to 15 U.S.C. 1706(e) and 24 CFR. 1720.165(b), notice is hereby given that:

1. South Houghton Lake Forest Estates, Richard A. Bellware, President and Houghton Lake Forest Estates, Inc., its officers and agents, hereinafter referred to as "Respondent", being subject to the provisions of the Interstate Land Sales Full Disclosure Act (Pub. L. 90-448) (15 U.S.C. 1701, et seq.) received a Notice of Proceedings and Opportunity for Hearing dated February 22, 1978, which was sent to the developer pursuant to 15 U.S.C. 1706(b), 24 CFR 1701.45(a)(1) and § 1720.120 based on information obtained by the office of Interstate Land Sales Registration showing that the Statement of Record and Property Report for South Houghton Lake Forest Estates, located in Roscommon County, Mich., contain untrue statements of material fact or omit to state material facts required to be stated therein or necessary to make the statements therein not misleading.

2. The Respondent filed an Answer received March 14 1978 in response to the Notice of Proceedings and Opportunity for Hearing.

3. In said Answer the Respondent requested a hearing on the allegations contained in the Notice of Proceedings and Opportunity for Hearing.

4. Therefore, pursuant to the provisions of 15 U.S.C. 1706(d) and 24 CFR 1720.160(d), *it is hereby ordered*, That a public hearing for the purpose of taking evidence on the questions set forth in the Notice of Proceedings and Opportunity for Hearing will be held before Judge James W. Mast, in Detroit, Mich., at a place to be determined on May 30, 1978 at 10 a.m.

5. The following time and procedure is applicable to such hearing: The parties are directed to file all affidavits and a list of all witnesses with the Hearing Clerk, HUD Building, Room 10278, Washington, D.C. 20410 on or before April 27, 1978. Copies of all documents filed should be served at the same time on all parties of record.

6. The Respondent is *hereby notified*, That failure to appear at the above scheduled hearing shall be deemed a fault and the proceedings shall be determined against Respondent, the allegations of which shall be deemed to be true, and an order Suspending the Statement of Record, herein identified, shall be issued pursuant to 24 CFR 1710.45(b)(1).

This Notice shall be served upon the Respondent forthwith pursuant to 24 CFR 1720.440.

Dated: March 24, 1978.

By the Secretary.

JAMES W. MAST,
Chief, Administrative Law Judge.

[FR Doc. 78-8805 Filed 4-3-78; 8:45 am]

[4310-84]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

CALIFORNIA DESERT CONSERVATION AREA ADVISORY COMMITTEE

Meeting

Notice is hereby given in accordance with Pub. L. 92-463 and 94-579 that the California Desert Conservation Area Advisory Committee to the Bureau of Land Management, U.S. Department of the Interior, will meet May 11-13, 1978, in Bishop, Calif. The committee will review policy guidance

for desert planning, hold a working session on the planning process for the California Desert Conservation Area, and discuss the procedure for conducting wilderness review in the desert. The committee also will receive reports from its subcommittees on public participation, interim management and organization.

The meetings will be held in the Bishop City Council Chambers, 301 West Line Street, Bishop, Calif. 93514, beginning at 8 p.m., Thursday, May 11, 1978; and at 8 a.m. on Friday, May 12 and Saturday, May 13. All meetings of the committee are open to the public, and attendance is invited. Time will be made available beginning at 10 a.m., Saturday, May 13, for brief oral statements by the public on subjects under consideration by the committee or relative to public lands of the northern desert area. Such statements should be reduced to writing and filed with the committee chairman in order to assure a complete public record. Persons wishing to make oral statements should contact the Chairman, California Desert Conservation Area Advisory Committee, c/o Desert Plan Staff, Bureau of Land Management, 3610 Central Avenue, Suite 402, Riverside, Calif. 92506. The committee will depart in the afternoon of Saturday, May 13, for a field review of the Eureka and Saline Valleys and adjacent public lands of the desert conservation area, utilizing both ground and air transportation. No provision will be made for public participation in the field review because of severe space limitations and extensive areas to be covered in a short time.

Advance notice also is given of the committee's tentative schedule and themes for meetings during the balance of 1978:

Wednesday through Friday, July 19-21. San Bernardino; Minerals, energy, and transmission corridors.

Wednesday through Friday, September 23-29, San Bernardino; Land tenure adjustments, military bases and community issues.

Wednesday through Friday, November 29-December 1, Riverside; Vegetative resources, grazing, feral burros, wildlife resources, scientific research and educational use of the desert.

Dated: March 28, 1978.

ED HASTEY,
State Director.

[FR Doc. 78-8728 Filed 4-3-78; 8:45 am]

[4310-84]

OUTER CONTINENTAL SHELF OFFICIAL PROTRACTION DIAGRAMS

Notice of Approval

1. Notice is hereby given that, effective with this publication, the following OCS Official Protraction Diagrams, approved on the dates indicated, are available for information only, in the Outer Continental Shelf Office, Bureau of Land Management, Anchorage, Alaska. In accordance with Title 43, Code of Federal Regulations, these protraction diagrams are the basic record for the description of mineral and oil and gas lease offers in the geographic area they represent.

OUTER CONTINENTAL SHELF PROTRACTION DIAGRAMS

	Description	*Approval date*
NM 2-1	Amukta Pass	July 21, 1977.
NN 2-6	Umnak	Do.
NN 2-8	Samalga Island	June 14, 1977.
NN 3-3	Akutan	Do.
NN 3-5	Unalaska	Do.
NO 3-1	Cape Mendenhall	July 21, 1977.
NP 2-5		June 14, 1977
NQ 3-1	Cape Seppings	July 21, 1977.
NQ 3-2	Noatak	Do.
NQ 3-3	Shishmaref	Do.
NQ 3-4	Kotzebue	Do.
NQ 3-5	Teller	Do.
NR 3-7	Point Hope	Do.
NR 3-8	De Long Mountains	Do.

2. Copies of these diagrams are for sale at two dollars ($2) per sheet by the Manager, Outer Continental Shelf Office, Bureau of Land Management, P.O. Box 1159, Anchorage, Alaska 99510. The street address is 800 A Street, Anchorage, Alaska. Checks or Money Orders should be made payable to the Bureau of Land Management.

EDWARD J. HOFFMANN,
Manager, Alaska Outer Continental Shelf Office.

[FR Doc. 78-8729 Filed 4-3-78; 8:45 am]

[4310-84]

Bureau of Land Management

[CA 4364]

CALIFORNIA

Application

MARCH 28, 1978.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185) as amended by the Act of November 16, 1973 (87 Stat. 576), the Shell Oil Co. has applied for a 6-inch steel pipeline right-of-way across the following described public lands:

MOUNT DIABLO BASE AND MERIDIAN

T. 32 S., R. 22 E.,
Sec. 7, in NE¼.

This pipeline will carry oil across public land in Kern County, Calif.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their view should promptly send their name and address to the State Office, Bureau of Land Management, Room E-2841, 2800 Cottage Way, Sacramento, Calif. 95825.

JOAN B. RUSSELL,
Chief, Lands Section, Branch of Lands and Minerals Operations.

[FR Doc. 78-8792 Filed 4-3-78; 8:45 am]

[4310-84]

[NM 33124, 33125, 33130, 33131, and 33132]

NEW MEXICO

Applications

MARCH 27, 1978.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), El Paso Natural Gas Co. has applied for five 4½-inch natural gas pipeline rights-of-way across the following lands:

NEW MEXICO PRINCIPAL MERIDIAN, N. MEX.

T. 18 S., R. 28 E.,
Sec. 13, W½NE¼, SE¼NE¼ and NE¼SE¼.
T. 18 S., R. 29 E.,
Sec. 18, lot 3 and NE¼SW¼.
T. 18 S., R. 31 E.,
Sec. 33, SE¼NE¼;
Sec. 34, N½NW¼ and SW¼NW¼.
T. 19 S., R. 33 E.,
Sec. 6, SW¼SE¼;
Sec. 7, W½NE¼ and NW¼SE¼.
T. 22 S., R. 36 E.,
Sec. 30, S½NE¼, NE¼SW¼ and NW¼SE¼.

These pipelines will convey natural gas across 3.015 miles of public lands in Eddy and Lea Counties, N. Mex.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the applications should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, N. Mex. 88201.

STELLA V. GONZALES,
Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-8794 Filed 4-3-78; 8:45 am]

[4310-84]

[NM 33126]

NEW MEXICO

Application

MARCH 27, 1978.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16,

1973 (87 Stat. 576), El Paso Natural Gas Co. has applied for one 4½-inch natural gas pipeline right-of-way across the following land:

NEW MEXICO PRINCIPAL MERIDIAN, N. MEX.

T. 21 S., R. 25 E.,
Sec. 5, lots 5, 8, 9, 10, and 15.

This pipeline will convey natural gas across 0.935 mile of public land in Eddy County, N. Mex.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, N. Mex. 88201.

STELLA V. GONZALES,
Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-8796 Filed 4-3-78; 8:45 am]

[4310-84]

[NM 33129 and 33100]

NEW MEXICO

Applications

MARCH 27, 1978.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), Phillips Petroleum Co. has applied for one 4½-inch and one 6⅝-inch natural gas pipeline rights-of-way across the following lands:

NEW MEXICO PRINCIPAL MERIDIAN, N. MEX.

T. 18 S., R. 32 E.,
Sec. 23, W½SW¼.
T. 23 S., R. 32 E.,
Sec. 17, SW¼NW¼, N½SW¼, SE¼SW¼ and SW¼SE¼;
Sec. 18, SE¼NE¼;
Sec. 20, N½NE¼;
Sec. 21, W½NW¼, SE¼NW¼, NE¼SW¼, W½SE¼ and SE¼SE¼;
Sec. 26, SW¼SW¼;
Sec. 27, SW¼NE¼, N½NW¼, SE¼NW¼, N½SE¼ and SE¼SE¼;
Sec. 28, NE¼NE¼;
Sec. 35, W½NE¼ and N½NW¼.

These pipelines will convey natural gas across 4.97 miles of public lands in Lea County, N. Mex.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the applications should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, N. Mex. 88201.

STELLA V. GONZALES,
Acting Chief, Branch of Lands and Minerals operations.

[FR Doc. 78-8795 Filed 4-3-78; 8:45 am]

[4310-84]

[SAC 076301]

CALIFORNIA

Opportunity for Public Hearing and Republication of Notice of Proposed Withdrawal

The Bureau of Reclamation, United States Department of the Interior, filed application Serial No. SAC 076301 on July 25, 1963, for a withdrawal in relation to the following described lands:

MOUNT DIABLO MERIDIAN, CALIF.

T. 32 N., R. 6 W.,
Sec. 27, SE¼SW¼NW¼.

The area described aggregates approximately 10 acres in Shasta County, Calif.

The applicant desires the land be reserved in conjunction with the construction, operation, and maintenance of the Trinity River Division of the Central Valley Project.

A notice of the proposed withdrawal was published in the FEDERAL REGISTER on August 9, 1963, page 8220, FR Doc. 63-8520.

Pursuant to Section 204(h) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2754, notice is hereby given that an opportunity for a public hearing is afforded in connection with the pending withdrawal application. All interested persons who desire to be heard on the proposed withdrawal must file a written request for a hearing to the undersigned, Bureau of Land Management, E-2841 Federal Office Building, 2800 Cottage Way, Sacramento, Calif. 95825, on or before April 27, 1978. All previous comments submitted in connection with the withdrawal application have been included in the record and will be considered in making a final determination on the application.

In lieu of or in addition to attendance at a scheduled public hearing, written comments or objections to the pending withdrawal application may be filed with the undersigned authorized officer of the Bureau of Land Management on or before April 27, 1978.

The above described lands are temporarily segregated from the operation of the public land laws, including the mining laws, to the extent that the withdrawal applied for, if and when effected, would prevent any form of disposal or appropriation under such laws. Current administrative jurisdiction over the segregated lands will not be affected by the temporary segregation. In accordance with Section 204(g) of the Federal Land Policy and Management Act of 1976, the segregative effect of the pending withdrawal application will terminate on October 20, 1991, unless sooner terminated by action of the Secretary of the Interior.

All communications in connection with the pending withdrawal application should be addressed to the undersigned.

JOAN B. RUSSELL,
Chief, Lands Section, Branch of Lands and Minerals Operations.

[FR Doc. 78-8793 Filed 4-3-78; 8:45 am]

[4310-03]

Heritage Conservation and Recreation Service

NATIONAL REGISTER OF HISTORIC PLACES

Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the Heritage Conservation and Recreation Service before March 24, 1978. Pursuant to section 60.13(a) of 36 CFR Part 60, published in final form on January 9, 1976, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the Keeper of the National Register, Office of Archeology and Historic Preservation, U.S. Department of the Interior, Washington, DC 20240. Written comments or a request for additional time to prepare comments should be submitted by April 14, 1978.

WILLIAM J. MURTAGH,
Keeper of the National Register.

ALASKA

Anchorage Division

Anchorage, *Anderson, Oscar, House* 4th Ave.

COLORADO

Denver County

Denver, *Public Service Building,* 910 15th St.
Denver, *Temple Emanuel,* 2400 Curtis St.

Larimer County

Fort Collins, *Botanical and Horticultural Laboratory,* Colorado State University campus.

Pueblo County

Pueblo, *Glass, J. S., Clothing Store,* 308 S. Union Ave.

DELAWARE

Sussex County

Rehoboth Beach vicinity, *Avery's Rest Site,* W of Rehoboth Beach.
Rehoboth Beach vicinity, *Thompson's Loss and Gain Site,* SW of Rehoboth Beach.

GEORGIA

Wilkes County

Washington vicinity, *Gilmer, Thomas M., House,* NW of Washington on U.S. 78 (proposed move presently in Oglethorpe Co.).

MARYLAND

Allegany County

Cumberland, *Sumner Cemetery,* Yale St.

Baltimore County

Kingsville vicinity, *Jericho Covered Bridge,* E of Kingsville on Franklinville Rd. (also in Harford Co.).
Owings Mills, *Owings Upper Mill,* Bonita Ave. and Reisterstown Rd.

Charles County

LaPlata vicinity, *Locust Grove,* W of LaPlata on MD 225.

Frederick County

Brunswick, *Brunswick Historic District,* roughly bounded by Potomac River, Central, Park, and 10th Aves., and C St.
Frederick vicinity, *Arcadia,* 3.5 mi. (5.6 Km) S of Frederick on MD 85.
Thurmont vicinity, *Covered Bridges in Frederick County,* Old Frederick Rd., Utica Rd., and Roddy Rd.

Montgomery County

Gaithersburg, *Gaithersburg B & O Railroad Station and Freight Shed,* Summit Ave. and E. Diamond Ave.

Prince Georges County

Upper Marlboro, *Content,* 14518 Church St.
Upper Marlboro, *Kingston,* 5415 Old Crain Hwy.
Upper Marlboro vicinity, *Compton Bassett,* 16508 Marlboro Pike.

Washington County

Leitersburg vicinity, *Bell-Varner House,* SE of Leitersburg on Unger Rd.

NEW JERSEY

Atlantic County

Atlantic City, *Shelburne Hotel,* Michigan Ave. and the Boardwalk.

NEW YORK

New York County

New York, *Radio City Music Hall,* 1260 Avenue of the Americas.

NORTH CAROLINA

Mecklenburg County

Charlotte, *Independence Building,* 100-102 W. Trade St.

Moore County

Eastwood vicinity, *Black-Cole House,* NW of Eastwood on SR 1222.

Orange County

Hillsborough vicinity, *St. Mary's Chapel,* NE of Hillsborough at jct. of SRs 1002 and 1648.

Robeson County

Lumberton, *Caldwell, Luther Henry, House,* 209 Caldwell St.

PENNSYLVANIA

Adams County

Hunterstown, *Hunterstown Historic District,* PA 394 and Granite Station Rd.

Allegheny County

Pittsburgh, *Burke Building,* 209-211 4th Ave.

Bedford County

Bedford, *Barclay House,* 230 Juliana St.
Bedford, *Russell House,* 203 S. Juliana St.

Berks County

Lenhartsville, *Lenhart Farm,* jct. of U.S. 22 and PA 143.

Blair County

Culp vicinity, *St. John's Evangelical Lutheran Church,* NE of Culp on Old Water Street Rd.

Bucks County

Pipersville vicinity, *Stover-Myers Mill,* N of Pipersville on Dark Hollow Rd.
Southampton, *Southampton Baptist Church and Cemetery,* 2nd St. Pike and Maple Ave.

Centre County

Philipsburg, *Philips, Hardman, House,* Presquisle and 4th Sts.
Philipsburg, *Union Church and Burial Ground,* E. Presqueisle St.

Crawford County

Meadville, *Ruter Hall,* N. Main St.

Delaware County

Media vicinity, *St. David's Church and Graveyard,* 7 mi. (11.2 km) N of Media at Valley Forge and Church Rds.

Franklin County

Greencastle vicinity, *Stover-Winger Farm,* Leitersburg Rd.

Lackawanna County

Scranton, *Dime Bank Building,* Wyoming Ave. and Spruce St.

Lehigh County

Allentown, *Trout Hall,* 414 Walnut St.

Mercer County

Jamestown, *Gibson House,* 210 Liberty St.

Monroe County

Saylorsburg vicinity, *Ross Common Manor,* S of Saylorsburg on PA 115.
Stroudsburg, *Monroe County Courthouse,* 7th and Monroe Sts.

Philadelphia County

Philadelphia, *Adelphi School,* 1223-1225 Spring St.
Philadelphia, *Chateau Crillon Apartment House,* 222 S. 19th St.
Philadelphia, *Drake Hotel,* 1512-1514 Spruce St.
Philadelphia, *Graham Factory and Laird, Schober and Mitchell Factory,* 19th St. between Hamilton and Buttonwood Sts.
Philadelphia, *Spring Garden District,* roughly bounded by Fairmount Ave., 15th, 24th, Mt. Vernon, and Spring Garden Sts.
Philadelphia, *Witherspoon Building,* 1319-1323 Walnut St.

Pike County

Bushkill, *Turn Store and Tinsmith's Shop,* U.S. 209.
Dingmans Ferry, *Dingman Ferry River House,* SR 950.

Snyder County

Selinsgrove, *Snyder, Gov. Simon, Mansion,* 119-121 N. Market St.

Union County

Allenwood vicinity, *Griffey, Benjamin, House,* W of Allenwood on PA 44.

Venango County

Oil City, *National Transit Building,* 206 Seneca St.

Warren County

Russell vicinity, *Irvine, Guy C., House,* 1.5 mi. (2.4 km) S of Russell on U.S. 62.

Wayne County

Waymart, *Delaware & Hudson Canal Company Gravity Railroad Depot,* South St.

Westmoreland County

Delmont, *Salem Crossroads Historic District,* Pittsburgh and Greenburg Sts.

TENNESSEE

Montgomery County

Clarksville vicinity, *Allen House,* N of Clarksville on Allen-Griffey Rd.

UTAH

Utah County

Goshen vicinity, *Tintic Standard Reduction Mill,* E of Goshen off U.S. 6.

[FR Doc. 78-8572 Filed 4-3-78; 8:45 am]

[4310-03]

NATIONAL REGISTER OF HISTORIC PLACES

Additions, Deletions, and Corrections

By notice in the FEDERAL REGISTER of February 7, 1978, Part II, there was published a list of the properties included in the National Register of Historic Places. Further notice is hereby given that certain amendments or revisions in the nature of additions, deletions, or corrections to the previously published list are adopted as set out below.

It is the responsibility of all Federal agencies to take cognizance of the properties included in the National Register as herein amended and revised in accordance with section 106 of the National Historic Preservation Act of 1966, 80 Stat. 16 U.S.C. 470 et seq. (1970 ed.), and the procedures of the Advisory Council on Historic Preservation, 36 CFR Part 800.

WILLIAM J. MURTAGH,
Keeper of the National Register.

The following list of properties have been added to the National Register of Historic Places since notice was last given in the February 7, 1978, Federal Register. National Historic Landmarks are designated by

NHL; properties recorded by the Historic American Buildings Survey are designated by HABS; properties recorded by the Historic American Engineering Record are designated by HAER; properties receiving grants-in-aid for historic preservation are designated by G.

ALABAMA

Calhoun County

Anniston, *St. Michael and All Angels Episcopal Church*, W. 18th St. (2-14-78)

ALASKA

Aleutian Islands Division

Unalaska vicinity, *Sitka Spruce Plantation*, N of Unalaska on Amaknak Island (2-14-78)

Bristol Bay Division

Kanatak vicinity, *Archeological Site 49 Af 3*, N of Kanatak on Katmai National Monument (2-17-78)
Naknek vicinity, *Brooks River Archeological District*, E of Naknek (2-14-78)

Cordova-McCarthy Division

McCarthy, *McCarthy General Store*, Kennecott and Skolai Sts. (1-31-78)

Juneau Division

Juneau, *Alaska Steam Laundry*, 174 S. Franklin St. (2-17-78)

Seward Division

Seward, *Swetman House*, 325 5th Ave. (2-17-78)

Sitka Division

Sitka, *Mills House*, 315 Seward St. (1-31-78)
Sitka, *St. Peter's Church*, 611 Lincoln St. (1-31-78)

ARIZONA

Navajo County

Cibecue vicinity, *Grasshopper Ruin*, W of Cibecue (2-17-78)

ARKANSAS

Benton County

Monte Ne, *Monte Ne*, off AR 94 (2-17-78)

Craighead County

Bay vicinity, *Bay Mounds*, N of Bay (2-14-78)

Logan County

Blue Mountain, *Chicago, Rock Island, and Pacific Railroad Depot*, off AR 10 (2-14-78)

CALIFORNIA

Alameda County

Berkeley, *Bryne House*, 1301 Oxford St. (2-17-78)

Fresno County

Fresno, *Einstein House*, 1600 M St. (1-31-78)
Fresno, *Pantages, Alexander, Theatre*, 1400 Fulton St. (2-23-78)
Pinehurst vicinity, *Shorty Lovelace Historic District*, E of Pinehurst on Kings Canyon National Park (1-31-78) (also in Tulare County)

Los Angeles County

Glendora, *Glendora Bougainvillea*, Bennett and Minnesota Aves. (2-7-78)

San Diego County

San Diego, *Independent Order of Odd Fellows Building*, 526 Market St. (1-31-78) HABS

San Mateo County

Princeton vicinity, *Archeological Site SMa-151*, W of Princeton (2-23-78)

Tulare County

Shorty Lovelace Historic District. Reference—see Fresno County.

Tuolumne County

Jamestown, *Emporium*, 735 Main St. (2-17-78)

COLORADO

Denver County

Denver, *Sugar Building*, 1530 16th St. (2-17-78)

Douglas County

Sedalia vicinity, *Indian Park School*, 10 mi. (16 km) W of Sedalia on CO 67 (2-8-78)

Moffat County

Maybell vicinity, *Two-Bar Ranch*, W of Maybell off CO 318 (2-17-78)

Pueblo County

Pueblo, *Baxter House*, 325 W. 15th St. (2-17-78)

CONNECTICUT

Litchfield County

Canaan vicinity, *Beckley Furnace*, SE of Canaan on Lower Rd. (2-14-78)

New Haven County

Waterbury, *Waterbury Union Station*, 389 Meadow St. (3-8-78)

Windham County

Eastford, *Bosworth, Benjamin, House*, John Perry Rd. (2-17-78)

DELAWARE

New Castle County

Middletown, *St. Joseph's Church*, 15 W. Cochran St. (2-17-78)
Middletown vicinity, *Maples*, W of Middletown on Bunker Hill Rd. (2-17-78)
Wilmington, *Pyle, Howard, Studios*, 1305 and 1307 N. Franklin St. (3-8-78)

Sussex County

Atlanta vicinity, *Melson House*, N of Atlanta on SR 30 (3-8-78)

FLORIDA

Broward County

Plantation vicinity, *Lock No. 1, North New River Canal*, S of Plantation on FL 84 (2-17-78)

Clay County

Green Cove Springs, *St. Mary's Church*, St. Johns Ave. (2-17-78)

GEORGIA

Jefferson County

Louisville, *Old Market (Slave Market)*, U.S. 1 and GA 24 (2-17-78) HABS

Oglethorpe County

Crawford vicinity, *Langston-Daniel House*, 5 mi. (8 km) W of Crawford on U.S. 78 (1-31-78) HABS
Lexington vicinity, *Bridges, J. L., Home Place*, N of Lexington on GA 22 (1-31-78)

IDAHO

Ada County

Boise, *Christian Church*, 9th and Franklin Sts. (2-17-78)
Boise, *Elks Temple*, 310 Jefferson St. (2-17-78)

Bannock County

Pocatello, *Trinity Episcopal Church*, 248 N. Arthur St. (2-17-78)

Blaine County

Hailey, *Blaine County Courthouse*, 1st and Croy Sts. (2-17-78)

Canyon County

Caldwell, *Blatchley Hall*, College of Idaho campus (3-8-78)
Caldwell, *Sterry Hall*, College of Idaho campus (3-8-78)

Latah County

Moscow, *Administration Building, University of Idaho*, University of Idaho campus (2-14-78)
Moscow, *McConnell-McGuire Building*, Main and 1st Sts. (2-7-78)

Lemhi County

Salmon, *Lemhi County Courthouse*, 1st St. N. and Broadway (2-7-78)
Salmon, *Odd Fellows Hall*, 516 Main St. (2-7-78)

Nez Perce County

Lewiston, *Kettenbach, Henry C., House*, 1026 9th Ave. (2-7-78)
Lewiston, *St. Stanislaus Catholic Church*, 633 5th Ave. (2-7-78)

Payette County

Payette, *Chase, David C., House*, 307 9th St. N. (2-7-78)
Payette, *Moss, A. B., Building*, 137 N. 8th St. (2-8-78)
Payette, *Whitney, Grant, House*, 1015 7th Ave. N. (2-23-78)

Twin Falls County

Buhl, *Buhl City Hall*, Broadway and Elm St. (2-8-78)

ILLINOIS

Cook County

Chicago, *South Loop Printing House District*, roughly bounded by Taylor, Polk, Wells, Congress, and State Sts. (3-2-78).

Madison County

Mitchell, *Mitchell Archeological Site*, (2-7-78).

Sangamon County

Springfield, *Iles, Elijah, House*, 1825 S. 5th St. (2-23-78).

INDIANA

Allen County

Fort Wayne, *Lindenwood Cemetery*, 2324 W. Main St. (2-17-78).

Monroe County

Bloomington, *Monroe Carnegie Library*, 200 E. 6th St. (3-8-78).

Vanderburgh County

Evansville, *Carpenter, Willard, House*, 405 Carpenter St. (2-10-78) HABS.

IOWA

Linn County

Walker, *Burlington, Cedar Rapids, and Minnesota Railroad: Walker Station*, between Rowley and Washington Sts. (2-14-78).

Story County

Ames vicinity, *Soper's Mill Bridge*, N of Ames off IA35 (2-14-78).

KANSAS

Lane County

Healy vicinity, *Pottorff Site*, N of Healy (3-8-78).

KENTUCKY

Adair County

Columbia, *Field, John, House*, 111 E. Fortune St. (2-8-78).

Bourbon County

Paris vicinity, *Escondida*, S of Paris on SR 4 (2-8-78).

Clark County

Winchester vicinity, *Springhill*, N of Winchester on Colby Rd. (2-17-78).

Fayette County

Lexington, *Bell Place*, Sayre Ave. (2-17-78).
Lexington, *Spring Hill Farm*, 1401 Old Frankfort Pike (2-17-78).

Franklin County

Frankfort vicinity, *Archeological Site 15 Fr 34*, N of Frankfort (2-17-78).
Harvieland vicinity, *Archeological Site 15 Fr 52*, NE of Harvieland (2-14-78).

Hardin County

West Point, *Young, James, House and Inn*, 109 Elm St. (2-17-78).

Henry County

New Castle, *Smith, Thomas, House*, 524 Cross Main St. (2-8-78).

Jefferson County

Louisville, *Brown Hotel, Building, and Theatre*, 675 River City Mall (2-17-78).
Louisville, *Howard-Gettys House*, 1226 Bates Court (2-8-78).
Louisville, *Kaufman-Straus Building*, 427-437 S. 4th St. (2-14-78).

Mason County

Maysville vicinity, *Rust House*, S of Maysville of KY 11 (2-23-78).

Mercer County

Harrodsburg, *St. Philips Episcopal Church*, Short and Chiles Sts. (1-31-78).

Robertson County

Mount Olivet, *Robertson County Courthouse*, Court St. (2-14-78).

Shelby County

Waddy, *Waddy Bank Building*, KY 395 (2-14-78).

Washington County

Springfield vicinity, *St. Rose Roman Catholic Church Complex*, W of Springfield off U.S. 150 (2-14-78).

LOUISIANA

East Baton Rouge Parish

Baton Rouge, *Tessier Buildings*, 342, 346, and 348 Lafayette St. (3-16-78).

MAINE

Androscoggin County

Lewiston, *Lewiston Public Library*, Park and Pine Sts. (1-31-78).

Cumberland County

Brunswick, *St. Paul's Episcopal Church*, 27 Pleasant St. (1-31-78).
Portland, *Clapp, Charles Q., Block*, Congress Sq. (1-31-78).
Portland, *First Baptist Church*, 353 Congress St. (1-31-78).

Kennebec County

Augusta, *All Souls Church*, 70 State St. (1-31-78).
Pittston, *Pittston Congregational Church*, jct. ME 27 and ME 194 (1-31-78).
Waterville, *Universalist-Unitarian Church*, Silver and Elm Sts. (2-17-78).

Knox County

Rockland, *Rockland Railroad Station*, Union St. (2-7-78).

Sagadahoc County

Bath vicinity, *Woolwich Town House*, NE of Bath at Old Stage and Dana Mills Rds. (2-17-78).

Waldo County

Unity, *Chase, Hezekiah, House*, U.S. 202 (1-31-78).

MARYLAND

Washington County

Harpers Ferry vicinity, *B&O Railroad Potomac River Crossing*, at confluence of the Shenandoah and Potomac Rivers (2-14-78) (also in Jefferson County, WV).

MASSACHUSETTS

Essex County

Salem, *Ward, Joshua, House*, 148 Washington St. (2-8-78) HABS.

Hampden County

Westfield, *Westfield Municipal Building*, 59 Court St. (3-8-78).

Middlesex County

Natick, *Clark Houses*, 74 and 76 W. Central St. (2-17-78).

Norfolk County

Brookline, *Devotion, Edward, House*, 347 Harvard St. (2-14-78).

Plymouth County

Brockton, *Old Post Office Building*, Crescent St. (3-8-78).
Brockton, *Packard, Moses, House*, 647 Main St. (2-17-78).
Duxbury vicinity, *Bradford, Capt. Gamaliel, House*, W of Duxbury at 942 Tremont St. (2-17-78).
Duxbury vicinity, *Bradford, Capt. Gershom, House*, W of Duxbury at 931 Tremont St. (2-8-78).

Worcester County

Millbury, *Waters, Asa, Mansion*, 123 Elm St. (2-14-78).
Oxford vicinity, *Hudson House*, NE of Oxford on Hudson Rd. (2-8-78).

MICHIGAN

Charlevoix County

Charlevoix vicinity, *Garden Island Indian Cemetery*, N of Charlevoix (2-17-78).

Cheboygan County

Campbell Farm Site, NW Cheboygan County (1-31-78).

Kalamazoo County

Kalamazoo, *East Hall*, Oakland Dr. (2-23-78).

Wayne County

Detroit, *Sweetest Heart of Mary Roman Catholic Church*, 4440 Russell St. (1-31-78).

MINNESOTA

Hennepin County

Minneapolis, *Bremer, Fredrika, Intermediate School*, 1214 Lowry Ave. N. (1-31-78).
Minneapolis, *Washburn-Fair Oaks Mansion District*, 1st and 2nd Aves., 22 St., and Stevens Ave. (2-17-78).

Houston County

Caledonia vicinity, *Schech's Mill*, NW of Caledonia in Beaver Creek Valley State Park (1-31-78).

Norman County

Twin Valley vicinity, *Faith Milling Company*, E of Twin Valley at Wild Rice River (1-31-78).

San Juan County

Fruitland vicinity, *Site No. OCA-CGP-605*, SE of Fruitland (2-17-78).

Winona County

Winona, *Anger's Block*, 116-120 Walnut St. (1-31-78).

MISSISSIPPI

Itawamba County

Kirkville vicinity, *Pharr Mounds*, 4 mi. (6.4 km) E of Kirkville (2-23-78) (also in Prentiss County).

Prentiss County

Pharr Mounds. Reference—see Itawamba County.

MISSOURI

Clay County

Kansas City, *Woodneath (Elbridge Arnold Homestead)*, 8900 NE Flintlock Rd. (2-17-78).

Dunklin County

Kennett vicinity, *Kennett Archeological Site*, W of Kennett (2-17-78).

Jackson County

Kansas City, *Shelley, William Francis, House*, 3601 Baltimore Ave. (3-17-78).
Kansas City, *Ward, Seth E., Homestead*, 1032 W. 55th St. (2-17-78).

MONTANA

Custer County

Miles City vicinity, *Fort Keogh*, 2.5 mi. (4 Km) SW of Miles City (3-8-78).

NEBRASKA

Custer County

Comstock, *Wescott, Gibbons & Bragg Store*, off NE 106 (1-31-78).

NEVADA

Lincoln County

Pioche, *Lincoln County Courthouse*, Lacour St. (2-23-78).

NEW HAMPSHIRE COUNTY

Rockingham County

Portsmouth, *Old North Cemetery*, Maplewood Ave. (3-8-78).

Sullivan County

Claremont, *Downtown Claremont and Lower village* (partial inventory), irregular pattern along Main and Broad Sts. (2-21-78).
Cornish Flat, *First Baptist Church of Cornish*, Meriden Stage Rd. and NH 120 (2-14-78).

NEW JERSEY

Bergen County

New Milford, *Desmarest, Jacobus, House*, 618 river Rd. (2-17-78) HABS.
Waldwick, *Waldwick Railroad Station*, Hewson Ave. and Prospect St. (2-23-78).

Burlington County

Riverside, *Philadelphia Watch Case Company Building*, Pavilion and Lafayette Aves. (1-31-78).

Cumberland County

Bridgeton, *Giles, Gen. James, House*, 143 W. Broad St. (3-8-78) HABS.

Essex County

Newark, *Newark City hall*, 920 Broad St. (2-17-78).

Mercer County

Princeton vicinity, *Rogers, John, House*, S of Princeton on S. Post Rd. (1-31-78).

Middlesex County

New Brunswick, *Wood Lawn*, Clifton Ave. and George St. (3-8-78).

Monmouth County

Allentown, *Allentown Mill*, 42 S. Main St. (2-14-78).
Eatontown, *St. James Memorial Church of Eatontown*, 69 Broad St. (2-17-78).

Ocean County

Beachwood vicinity, *Double Trouble Historic District*, S of Beachwood off Garden State Pkwy. (2-23-78).

Passaic County

Paterson, *Public School Number Two*, Mill and Passaic Sts. (3-8-78).

NEW MEXICO

Bernalillo County

Tijeras, *Holy Child Church*, off I-40/U.S. 66 (3-8-78).

San Juan County

Fruitland vicinity, *Archeological Site OCA-CGP-56*, SW of Fruitland (2-23-78).

NEW YORK

Naussau County

Garden City, *Old Nassau County Courthouse*, 1550 Franklin Ave. (2-17-78).

Rensselaer County

Troy, *Poesten Kill Gorge Historic District*, between Spring Ave. and NY 2 (3-8-78).

Washington County

Buskirk vicinity, *Covered Bridges of Washington County*, N of Buskirk off NY 22 near VT boundary (3-8-78).

NORTH CAROLINA

Chatham County

Pittsboro, *Pittsboro Masonic Lodge*, East and Masonic Sts. (1-31-78).

Columbus County

Fair Bluff, *Powell House*, Main and Orange Sts. (1-31-78).

Dare County

Hatteras, *Hatteras Weather Bureau Station*, off NC 12 (2-17-78).

Durham County

Durham vicinity, *Horton Grove Complex*, N of Durham on SR 1626 (3-17-78).

Forsyth County

Winston-Salem, *Smith, W. F., and Sons Leaf House and Brown Brothers Company Building*, 4th St. between Patterson and Linden (2-23-78).

Gaston County

Gastonia, *Jenkins, David, House*, 1017 Church St. (2-17-78).

Guilford County

Gibsonville vicinity, *Low House*, S of Gibsonville (3-8-78).
Greensboro, *Sherwood, Michael, House*, 426 W. Friendly Ave. (1-31-78).

Mecklenburg County

Charlotte vicinity, *White Oak Plantation*, E of Charlotte on SR 2826 (2-7-78).

Rowan County

Spencer, *Southern Railway Spenser Shops*, Salisbury Ave. between 3rd and 8th Sts. (3-17-78).

Wake County

Raleigh, *Montford Hall*, 308 Boylan Ave. (3-8-78).

NORTH DAKOTA

Burleigh County

Bismarck, *Fire Hall*, 517 E. Thayer Ave. (2-14-78).

Traill County

Buxton, *First State Bank of Buxton*, 423 Broadway St. (2-14-78).

OHIO

Brown County

Georgetown vicinity, *Thompson-Bullock House*, W of Georgetown on OH 221 (2-23-78).

Butler County

Hamilton vicinity, *FitzRandolph-Rogers House*, 5467 Liberty-Fairfield Rd. (2-8-78).

Clark County

Springfield, *Warder Public Library*, E. High and Spring Sts. (2-17-78).
Springfield vicinity, *Hertzler, Daniel, House*, W of Springfield off OH 4 (2-7-78).

Clinton County

Clarksville vicinity, *Harvey, Eli, House*, 1133 Lebanon Rd. (2-14-78).

Cuyahoga County

Cleveland, *Goldsmith, Jacob, House*, 2200 E. 40th St. (3-8-78).

Darke County

Greenville, *Coppess, Benjamin Franklin House*, 209 Washington St. (3-10-78).

Franklin County

Columbus vicinity, *McDannald Homestead*, NE of Columbus at 5847 Sunbury Rd. (2-17-78).

Hamilton County

Cincinnati, *College Hill Town Hall*, Belmont Ave. and Larch St. (3-17-78).

Lake County

Mentor, *Lake Shore & Michigan Southern Railroad Depot and Freight House*, 8445 Station St. (1-31-78).

Lawrence County

Burlington vicinity, *Macedonia Church*, N of Burlington (2-7-78).

Medina County

Mallet Creek, *York United Methodist Church*, Norwalk Rd. (2-17-78).

Miami County

New Carlisle vicinity, *Baumgardner, William, House and Farm Buildings*, 8390 National Rd. (2-17-78).

Montgomery County

Dayton, *Gummer House*, 1428 Huffman Ave. (2-17-78).
Kettering, *Kettering, Charles F., House*, 3965 Southern Blvd. (2-17-78).

Muskingum County

Zanesville, *Lash, William D., House*, 2261 Dresden Rd. (2-17-78).

Perry County

New Reading vicinity, *Bowman Mill Covered Bridge*, S of New Reading on Sr 86 (2-8-78).

Portage County

Kent, *Kent, Charles House*, 125 N. Pearl St. (2-23-78).

Stark County

Canton, *Bordner House*, 4522 7th St., SW. (2-17-78).

Trumbull County

North Bloomfield vicinity, *Greene Township Center*, E of North Bloomfield on OH 87 (3-8-78).

Union County

Marysville, *Marysville Historic District*, roughly bounded by Maple, Plum, 4th, and 7th Sts. (2-1-78).

Warren County

Franklin vicinity, *Crane, Jonathan, Farm*, S of Franklin on OH 741 (2-17-78).
Waynesville vicinity, *McKay, Moses, House*, E. of Waynesville, on New Burlington Rd. (2-17-78).

Washington County

Belpre, *Ames, Charles Rice, House*, 2212 Miller Ave. (2-14-78).
Belpre, *Stone, Capt., Jonathan, House*, 612 Blennerhassett Ave. (2-7-78).
Marietta vicinity, *Hildreth Covered Bridge*, 5 mi. (8 km) E of Marietta off OH 26 (2-8-78).

OKLAHOMA

Comanche County

Lawton vicinity, *Post, Henry, Air Field*, N of Lawton on Fort Sill (1-30-78).

Harper County

Laverne, *Fox Hotel*, Broadway and NE. 1st St. (1-30-78).

Muskogee County

Fort Gibson, *Seawell-Ross-Isom House*, Beauregard and Elm Sts. (1-30-78).

Oklahoma County

Oklahoma City, *St. Joseph's Cathedral*, 225 NW. 4th St. (1-30-78).

Payne County

Ingalls vicinity, *Irvings Castle*, 2.5 mi. (4 km) S of Ingalls (2-17-78).

Tulsa County

Tulsa, *Harwelden*, 2210 S. Main St. (2-8-78).

Wagoner County

Porter vicinity, *Van Tuyl Homeplace*, N of Porter (2-7-78).

OREGON

Clackamas County

Park Place, *Straight, Hiram A., House*, 16000 S. Depot La. (2-17-78).

Clatsop County

Astoria, *Hobson, John, House*, 469 Bond St. (2-17-78).
Astoria, *Lightship Columbia*, 17th St. (2-17-78).

Jackson County

Ashland, *IOOF Building*, 49-57 N. Main St. (2-17-78).
Ashland, *Mark Antony Motor Hotel*, 212 E. Main St. (3-14-78).
Ashland, *Walker, John P., House*, 1521 E. Main St. (3-14-78).
Ashland vicinity, *Dunn, Patrick, Ranch*, SE of Ashland on OR 66 (3-8-78).
Medford, *Liberty Building*, 201 W. Main St. (3-14-78).
Phoenix, *McManus, Patrick F., House (Colver House)*, 117 W. 1st St. (3-8-78) HABS.

Marion County

Salem, *Bush-Breyman Block*, 141-147 N. Commercial St. (2-17-78).
Salem, *McCully, David, House*, 1365 John St. S. (2-14-78).
Salem, *Reed Opera House and McCornack Block Addition*, 189 and 177 Liberty St., NE. (3-8-78).
Salem, *Wade, William Lincoln, House*, 1305 John St., S. (2-17-78).

Multnomah County

Portland, *Bank of California Building*, 330 SW. 6th Ave. (3-14-78).
Portland, *Bowles, Joseph R., House*, 1934 SW. Vista Ave. (3-8-78).
Portland, *Doernbecher, Frank Silas, House*, 2323 NE. Tillamook St. (3-14-78).
Portland, *Elks Temple*, 614 SW. 11th Ave. (2-17-78).
Portland, *Palmer, John, House*, 4314 N. Mississippi Ave. (3-8-78).
Portland, *Postal Building*, 510 SW. 3rd Ave. (3-14-78).
Portland, *Stratton-Cornelius House*, 2182 SW. Yamhill St. (3-8-78).

Wallowa County

Joseph, *First Bank of Joseph*, 2nd and Main Sts. (2-23-78).

Yamhill County

McMinnville, *Pioneer Hall, Linfield College*, Linfield College campus (2-23-78).

PENNSYLVANIA

Allegheny County

Pittsburgh, *Moreland-Hoffstot House*, 5057 5th Ave. (2-23-78).

Berks County

Douglassville, *St. Gabriel's Episcopal Church*, U.S. 422 (3-8-78).

Centre County

Bellefonte, *South Ward School*, Bishop St. (2-23-78).
Centre Hall vicinity, *Beck, James, Round Barn*, 3.2 mi. (5.1 km) E of Centre Hall on PA 192 (2-17-78).

Crawford County

Meadville, *Independent Congregational Church*, 346 Chestnut St. (3-8-78).

Dauphin County

Harrisburg, *Telegraph Building*, 214-216 Locust St. (3-3-78).
Hershey, *High Point (Milton S. Hershey Mansion)*, Mansion Rd. (2-7-78).

Delaware County

Wayne, *Saturday Club*, 117 W. Wayne Ave. (3-14-78).

Fayette County

Farmington, *Rush House*, U.S. 40 and PA 381 (3-8-78).

Lebanon County

Annville, *Biever House*, 49 S. White Oak St. (2-14-78).

Lehigh County

Emmaus, *Shelter House*, S. 4th St. (2-17-78).

Philadelphia County

Philadelphia, *College Hall, University of Pennsylvania*, bounded by Walnut, Spruce, 34th, and 36th Sts. (2-14-78).

York County

York, *York Dispatch Newspaper Offices*, 15 and 17 E. Philadelphia St. (3-8-78).

RHODE ISLAND

Providence County

Cranston, *Knightsville Meetinghouse*, 67 Phenix Ave. (3-8-78).
Providence, *Lynch, Matthew, House*, 120 Robinson St. (3-8-78).

Washington County

Carolina vicinity, Jeffrey, Joseph, House, S of Carolina on Town House Rd. (3-8-78).

SOUTH CAROLINA

Berkeley County

Cordesville vicinity, *Taveau Church, S of Cordesville on SR 44 (2-14-78).*
Hanahan vicinity, *Otranto Plantation*, 18 Basilica Ave. (2-17-78).

Calhoun County

Gaston vicinity, *Baker, William, House*, E of Gaston off U.S. 21/176 (3-8-78).

Charleston County

Charleston, *Lucas, Jonathan, House*, 286 Calhoun St. (2-23-78).

Dorchester County

St. George vicinity, *Appleby's Methodist Church*, SW of St. George at jct. of SR 19 and SR 71 (2-14-78).

Laurens County

Laurens, *Owings, John Calvin, House*, 787 W. Main St. (2-23-78).

Union County

Carlisle vicinity, *Hillside*, NW of Carlisle on SC 215 (2-17-78).

York County

York, *Witherspoon-Hunter House*, 15 W. Liberty St. (2-7-78)

SOUTH DAKOTA

Grant County

Strandburg, *Swedish Lutheran Churgh of Strandburg*, Main St. (2-17-78).

Minnehaha County

Dell Rapids, *Dell Rapids Historic District*, 335-536 E. 4th St. (2-23-78).

Spink County

Redfield, *Redfield Carnegie Library*, 5 E. 5th Ave. (2-17-78).

TENNESSEE

Maury County

Columbia, *West Sixth Street and Mayes Place Historic District,* W. 6th St. and Mayes Pl. (2-25-78).

Montgomery County

Clarksville vicinity, *Old Post House,* N of Clarksville on U.S. 41 A (3-8-78).

Washington County

Telford vicinity, *Embree House,* SW of Telford on Walker's Mill Rd. (2-14-78).

TEXAS

Bexar County

San Antonio, *Sullivan, Daniel J., Stable and Carriage House,* 314 4th St. (2-23-78).

Donley County

Clarendon, *Donley County Courthouse and Jail,* Public Sq. (2-17-78).

Presidio County

Presidio vicinity, *La Junta de los Rios Archeological District,* Rio Grande and U.S. 67 (2-14-78).

Tarrant County

Fort Worth, *Anderson, Neil P., Building,* 411 W. 7th St. (3-8-78).

Travis County

Austin, *Southwestern Telegraph and Telephone Building,* 410 Congress Ave. (2-14-78).
Austin, *Wahrenberger House, 208 W. 14th St. (2-23-78).*

TRUST TERRITORY OF THE PACIFIC ISLANDS

Mariana Island District

Saipan, *Waherak Maihar,* Public Works Headquarters Compound (1-31-78).

UTAH

Carbon County

Price, *Price Municipal Building,* 200 East and Main St. (2-17-78).

Davis County

Layton, *Adams, Joseph, House,* 300 N. Adamswood Rd. (2-17-78).

Salt Lake County

Salt Lake City, *Peery Hotel,* 270-280 S. West Temple, 102-120 W. 300 South (2-17-78).

Utah County

Payson, *Dixon, John, House,* 218 N. Main St. (2-17-78).

Washington County

St. George, *Judd, Thomas, House,* 269 S. 200 East (1-31-78).

Weber County

Ogden, *Lower Twenty-fifth Street Historic District,* 25th St. between Wall and Grant Aves. (1-31-78).

VERMONT

Addison County

Ferrisburg, *Union Meetinghouse,* U.S. 7 (2-23-78).

VIRGIN ISLANDS

St. Croix Island

Christiansted vicinity, *Richmond Prison, Detention and Workhouse,* W. of Christiansted (2-14-78).
Frederiksted vicinity, *Estate Hogansborg,* E. of Frederiksted off Centerline Rd. (2-17-78).
Frederiksted vicinity, *Estate Prosperity,* N. of Frederiksted (2-17-78).
Frederiksted vicinity, *Estate Mount Victory,* NE of Frederiksted (2-17-78).

St. John Island

Coral Bay vicinity, *HMS Santa Monica,* at Hansen Bay (2-17-78).

St. Thomas Island

Charlotte Amalie vicinity, *Estate Hafensight,* S of Charlotte Amalie (2-17-78).
Charlotte Amalie vicinity, *Estate Neltjeberg,* NW of Charlotte Amalie (2-17-78).
Charlotte Amalie vicinity, *Estate Perseverance,* W of Charlotte Amalie (2-17-78).
Charlotte Amalie vicinity, *Mafolie Great House,* N of Charlotte Amalie (2-17-78).
Charlotte Amalie vicinity, *Venus Hill,* N of Charlotte Amalie (2-17-78).

VIRGINIA

Bedford (independent city)

Bedford Historic Meetinghouse, 153 W. Main St. (1-31-78).

Charlotte County

Brookneal vicinity, *Red Hill,* SE of Brookneal on SR 677 (2-14-78).

WASHINGTON

Columbia County

Starbuck, *Bank of Starbuck,* Main and McNeil Sts. (2-8-78).

Franklin County

Pasco, *Franklin County Courthouse,* 1016 N. 4th St. (2-8-78).

Kittitas County

Roslyn, *Roslyn Historic District,* WA 2E (2-14-78).

Spokane County

Latah, *Ham-McEachern House,* Pine and 5th Sts. (2-8-78).
Spokane, *Spokane Flour Mill,* W. 621 Mallon Ave. (2-8-78).

Wahkiakum County

Altoona, *Columbia River Gillnet Boat,* Altoona Cannery (2-14-78).

Whitman County

Oakesdale, *Barron, J. C., Flour Mill,* 1st and Jackson Sts. (2-8-78).

WEST VIRGINIA

Jefferson County

B&O Railroad Potomac River Crossing, Reference—see Washington County, MD.

WISCONSIN

Dane County

Waunakee, *Waunakee Railroad Depot,* South and Main Sts. (2-14-78).

Juneau County

New Lisbon vicinity, *Gee's Slough Mound Group,* SE of New Lisbon (3-8-78).

Price County

Fifield, *Fifield Town Hall,* Pine St. and Flambeau Ave. (2-17-78).

Rock County

Clinton vicinity, *Jones, Samuel S., Cobblestone House,* E of Clinton on Milwaukee Rd. (2-23-78).
Edgerton vicinity, *Kinney Farmstead/Tay-e-he-dah Site,* E of Edgerton at 3889 Hotel Dr. (2-17-78).

Vilas County

Lac du Flambeau vicinity, *Strawberry Island Site,* W of Lac du Flambeau (3-8-78).

* * * * *

The following is a list of corrections to properties previously listed in the FEDERAL REGISTER.

OREGON

Marion County

Champoeg vicinity, *Case, William, Farm,* SE of Champoeg off Arbor Grove Rd. (3-21-73).

WISCONSIN

Grant County

Platteville, *Rountree Hall,* Elm and Main Sts. (12-17-74).

* * * * *

The following property was omitted from the February 7, 1978, listing of properties in the FEDERAL REGISTER.

WISCONSIN

Crawford County

Prairie du Chien, *Dousman Hotel,* Water St., St. Feriole Island (10-15-66) NHL.

* * * * *

The following properties have been demolished and/or removed from the National Register of Historic Places.

CALIFORNIA

Santa Clara County

San Jose, *Murphy Building,* 36 S. Market St.

IOWA

Dubuque County

Dubuque, *Dubuque Brewing and Malting Company Buildings,* 30th and Jackson Sts.

KANSAS

Dickinson County

Solomon, *Union Pacific Railroad Depot,* 3rd St.

KENTUCKY

Fayette County

Lexington vicinity, *Paris Pike Historic District.*

MISSISSIPPI

Harrison County

Biloxi, *Gillis House*, 513 E. Beach Blvd.

RHODE ISLAND

Washington County

Davisville vicinity, *Camp Endicott*, off U.S. 1.

WISCONSIN

LaCrosse County

LaCrosse, *Cargill, William W., House*, 235 West Ave. S.

Rock County

Janesville, *Myers Opera House*, 118 E. Milwaukee St.

* * * * *

Determinations of eligibility are made in accordance with the provisions of 36 CFR 63, procedures for requesting determinations of eligibility, under the authorities in section 2(b) and 1(3) of Executive Order 11593 and section 106 of the National Historic Preservation Act of 1966, as amended, as implemented by the Advisory Council on Historic Preservation's procedures, 36 CFR Part 800. Properties determined to be eligible under § 63.3 of the procedures for requestion determinations of eligibility are designated by (63.3).

Properties which are determined to be eligible for inclusion in the National Register of Historic Places are entitled to protection pursuant to section 106 of the National Historic Preservation Act of 1966, as amended, and the procedures of the Advisory Council on Historic Preservation, 36 CFR Part 800. Agencies are advised that in accord with the procedures of the Advisory Council on Historic Preservation, before any agency of the Federal Government may undertake any project which may have an effect on an eligible property, the Advisory Council on Historic Preservation shall be given an opportunity to comment on the proposal.

The following list of additions, deletions, and corrections to the list of properties determined eligible for inclusion in the National Register is intended to supplement the cumulative version of that list published in February of each year.

ALABAMA

Autauga County

Jones Bluff vicinity, *Ivy Creek Archeological District*, Jones Bluff park (63.3)

Pickens County

Gainsville Lake vicinity, *Tombigbee River Multiple Resource District (Summerville Mound Site 1Pi85)*, Lubbub Creek Cutoff (63.3)

ARIZONA

Pinal County

Sacaton, *Upper Santan Village (Gila River Indian Reservation)*, jct. Gila River Rt. 7 and AZ 87.

Yuma County

Bouse vicinity, *Archeological Sites AZ 1:1, 2, 3, 4, 5, 6(ASU) and AZ S:2:2(ASU)*, Central Arizona Project (63.3).

CALIFORNIA

Alameda County

Oakland, *Hoover, Herbert, House*, 1079–1081 12th St. (63.3).

Lake County

Arcehological Site 4-Lak-702, Lake/Colusa boundary (63.3).

Los Angeles County

Los Angeles, *Baldwin Park City hall (Central School)*, Baldwin park (63.3) Pasadena, *Vista del Arroya Complex*, bounded by Arroyo Blvd, and Defender's Pkwy, and Grand Ave.

Mariposa County

Old Coulterville road and Trail, Yosemite National Park

San Diego County

San Diego vicinity, *Archeological Sites Sdi 4807, 4808, 4806, 4556*

Ventura County

Archeological Site 4 VEN 247, Los Padres national Forest (63.3).
Archeological Site 4 Ven 280 (Ca-VEN-280), Los Padres National Forest (63.3).

CONNECTICUT

Fairfield County

Bridgeport, *No. 3—3½ Armstrong Place*, Armstrong Mill Historic District proposed (63.3).

Hartford County

Simsbury, *Heublein Tower*, Talcott Mountain State Park (63.3) West Hartford, *Hooker, Sarah Whitman, House*, 1237 New Britain Ave. (63.3).

DISTRICT OF COLUMBIA

Washington

United Brick Corporation Complex, Bladensburg and New York Ave.

GEORGIA

Camden County

St. Mary's vicinity, *Dungeness, Plum Orchard, Stafford Plantation, Stafford Plantation/Grand Avenue*, Cumberland Island National Seashore (district).

Lumpkin County

Dahlonega vicinity, *Archeological Site 9 Lu (DOT) 1*, S of Dahlonega (63.3).

Ware County

Waycross, *Everett, T. L., House*, GA 38 (63.3).

ILLINOIS

Rock Island County

Rock Island, *Rosenfield, Morris, House*, 617 19th St./1911 6th St. (63.3).

IOWA

Black Hawk County

Waterloo, *Cedar Park Rest Room Building*, jct. of Fairview and Lafayette (63.3).

Cerro Gordo County

Mason City, *Knights of Columbus Hall*, 202–204 S. Federal Ave. (63.3).
Mason City, *Old Central Fire House*, 19 First St., SW. (63.3).
Mason City, *McFarlane, W. T., Building*, 123 S. Federal Ave. at 2nd St., SE (63.3).
Mason City, *Zoller Block/Bijou Theater*, 119–121 S. Federal Ave. (63.3).

MARYLAND

Baltimore (independent city)

Camden Station (Camden Station and B & O Depot), Camden, Butaw, Howard, and Conway Sts.
Camden Warehouse, Camden, Butaw, and Lee Sts.
Canton Historic District, Bounded by Boston St., Highland Ave., O'Donnell St. W, and Lakewood Ave.

Frederick County

Thurmont vicinity, *Catoctin Furnace Historic District*, U.S. 15.
Thurmont vicinity, *Moser Farm and Barn*, U.S. 15.

MICHIGAN

Washtenaw County

Lima Township Historic District, Lima Township (63.3).

MISSISSIPPI

Leflore County

Whaley, *Lightline Lake Site (22-Lf-504)*, MS 7 (63.3).

MISSOURI

Jackson County

Kansas City vicinity, *Archeological District*, Blue Springs Lake project.
Kansas City vicinity, *Archeological District*, Longview Lake project.

MONTANA

Lincoln County

Archeological Sites 24-LN-1036, 1037, 1130, 1131, Kootenai River, NW.

NEW JERSEY

Burlington County

Burlington, *Bethlehem A.M.E. Church*, 215 Pearl Blvd.
Burlington, *Factory Building*, 231 Penn St.
Burlington, *Oneida Boat Club*, York St.
Burlington, *Water Works*, Pearl Blvd.

Middlesex County

Perth Amboy, *Raritan River Steel Company (Raritan Copper Works/Anaconda Copper Refinery)*, Elm and Market Sts.

Union County

Plainfield, *Plainfield North and South Stations*, Watchung and North Aves.
Plainfield, *Roselle North and South Stations (Roselle Park)*, Westfield and East Aves.
Plainfield, *Scotch Plains North and South Stations and Pedestrian Overpass (Fanwood)*, Martine and North Aves.
Plainfield, *Westfield/Garwood North and South Stations and Kiosk*, North and South Aves.

NEW YORK

Queens County

Bayside, *Fort Totten Battery*, Fort Totten.

NORTH CAROLINA

Wake County

Falls, *Falls of the Neuse Manufacturing Company*, W bank of Neuse River at SR 2000 (63.3).

RHODE ISLAND

Washington County

Davisville vicinity, *Camp Endicott*, off U.S. 1.

* * * * *

The following is a list of correction to properties previously listed in the FEDERAL REGISTER as determined eligible for inclusion in the National Register of Historic Places:

CONNECTICUT

Middlesex County

Middletown, *Cookson, Fuller, and Southmayd Houses*, Main St. (also in Metro South Historic District—3 houses moved).
Middletown, *Mansion Block*, Main St. (also in Metro South Historic District).

LOUISIANA

West Feliciana Parish

Illinois Central Gulf RR. Right-of-Way, Hardwood, AL to Woodville, MS.

NEW JERSEY

Middlesex County

New Brunswick, *Delaware and Raritan Canal* (portion) between Albany St. and Landing Lane Bridge.

* * * * *

The following properties have been either demolished or placed on the National Register and are therefore removed from the Determinations for Eligibility Listing:

ARKANSAS

Ouachita County

Camden, *Old Post Office*, listed in the National Register.

PENNSYLVANIA

Lancaster County

Marietta, *Union Meetinghouse*, Waterford Ave. (63.3).

Philadelphia County

Philadelphia, *West Philadelphia Station (Pennsylvania RR. Station)*, W. River Dr., Market, 30th, and Arch Sts. (63.3).

VIRGINIA

Fairfax County

District of Columbia vicinity, *Dulles International Airport*, S of Washington, D.C. (also in Loudoun County) (63.3).

WEST VIRGINIA

Lewis County

Weston, *Lewis County Courthouse*, Center Ave. (63.3).

* * * * *

The following properties were omitted from the February 7, 1978, FEDERAL REGISTER Listing of Properties Determined Eligible:

CONNECTICUT

Middlesex County

Middletown, *Metro South Historic District.*

IOWA

Dubuque County

Dubuque, *Dubuque Brewing and Malting Company Buildings*, 30th and Jackson Sts.

NEW YORK

Wake County

Raleigh, *Raleigh, Sir Walter, Hotel*, 400-412 Fayette St. (63.3).

CALIFORNIA

Alameda County

Oakland, *First Unitarian Church*, listed in the National Register.

INDIANA

Monroe County

Bloomington, *Monroe Carnegie Library*, listed in the National Register.

MASSACHUSETTS

Berkshire County

Adams, *Quaker Meetinghouse*, listed in the National Register.

Bristol County

New Bedford, *Fire Station*, listed in the National Register.

[FR Doc. 78-8573 Filed 4-3-78; 8:45 am]

[4310-70]

Office of the Secretary

[INT DES 78-6]

GENERAL MANAGEMENT PLAN GATEWAY NATIONAL RECREATION AREA

Availability of Draft Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a draft environmental statement for general management planning for Gateway National Recreation Area and has also prepared a decisions paper preliminary to completion of the general management plan. The draft environmental statement and decisions paper consider measures to guide park development and management in stages and phases over the next 20 years. This environmental statement assesses only those actions scheduled for stage 1 while the other two stages are briefly described and will be assessed in subsequent planning and design work with public review prior to physical implementation. The proposals deal with such topics as management zoning, resource management policies, transportation policies, concession management, and design standards. There are unit specific proposals for the most urgent management and development matters in the unit areas of Sandy Hook, Staten Island, Breezy Point, Floyd Bennett Field/Plumb Beach, Jamaica Bay North Shore, and Jamaica Bay Wildlife Refuge.

Written comments on the draft environmental statement are invited and will be accepted for a period of 60 days following publication of this notice.

Written comments should be addressed to the Superintendent, Gateway National Recreation Area, National Park Service, Floyd Bennett Field, Building 69, Brooklyn, N.Y. 11234.

Copies of the draft environmental statement and Decisions Paper are available from or for inspection at the following locations:

National Park Service, North Atlantic Region, 15 State Street, Boston, Mass. 02109.
National Park Service, Manhattan Sites, 26 Wall Street (Federal Hall), New York, N.Y. 10005.
Gateway National Recreation Area, National Park Service, Floyd Bennett Field, Building 69, Brooklyn, N.Y. 11234.

Dated: March 14, 1978.

LARRY E. MEIEROTTO
Deputy Assistant Secretary of the Interior.

[FR Doc. 78-7509 Filed 4-3-78; 8:45 am]

[7020-02]

INTERNATIONAL TRADE COMMISSION

[AA1921-176]

IMPRESSION FABRIC OF MANMADE FIBER FROM JAPAN

Determination of Likelihood of Injury

On December 28, 1977, the U.S. International Trade Commission received advice from the Department of the Treasury that impression fabric of manmade fiber from Japan, with the exception of that merchandise produced by Asahi Chemical Industry Co., Ltd., and Shirasaki Tape Co., Ltd., is being, or is likely to be, sold in the United States at less than fair value (LTFV) within the meaning of the An-

tidumping Act, 1921, as amended (19 U.S.C. 160(a)). Accordingly, on January 5, 1978, the Commission instituted investigation No. AA1921-176 under section 201(a) of said act to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States.

Notice of the institution of the investigation and of the public hearing to be held in connection therewith was published in the FEDERAL REGISTER on January 11, 1978 (43 FR 1655). On February 15, 1978, a hearing was held in New York City, at which all interested parties were provided an opportunity to appear by counsel or in person.

In arriving at its determination, the Commission gave due consideration to all written submissions from interested parties and information adduced at the hearing as well as information provided by the Department of the Treasury and data obtained by the Commission's staff from questionnaires, personal interviews, and other sources.

On the basis of its investigation, the Commission determines (Chairman Minchew and Commissioner Alberger dissenting and Vice Chairman Parker not participating) that an industry in the United States is likely to be injured by reason of the importation of impression fabric of manmade fiber from Japan, with the exception of that merchandise produced by Asahi Chemical Industry Co., Ltd., and Shirasaki Tape Co., Ltd., which is being or is likely to be, sold at LTFV within the meaning of the Antidumping Act, 1921, as amended.

STATEMENT OF REASONS FOR THE AFFIRMATIVE DETERMINATION OF COMMISSIONERS GEORGE M. MOORE, CATHERINE BEDELL, AND ITALO H. ABLONDI

On December 28, 1977, the U.S. International Trade Commission received advice from the Department of the Treasury that impression fabric of manmade fiber from Japan, with the exception of that merchandise produced by Asahi Chemical Industry Co., Ltd., and Shirasaki Tape Co., Ltd., is being, or is likely to be, sold in the United States at less than fair value (LTFV) within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)). Accordingly, on January 5, 1978, the Commission instituted investigation No. AA1921-176 under section 201(a) of said act to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established,[1] by reason of the importation of such merchandise into the United States.

[1]Prevention of establishment of an industry is not an issue in this investigation and will not be discussed further.

DETERMINATION

On the basis of the information obtained in the investigation, we determine that an industry in the United States is likely to be injured by reason of the importation of impression fabric of manmade fiber from Japan which the Department of the Treasury has determined is being, or is likely to be, sold at LTFV.

THE IMPORTED ARTICLE AND THE DOMESTIC INDUSTRY

The impression fabric of manmade fiber which is the subject of this investigation is closely woven nylon fabric suitable for making typewriter and machine ribbon.

There are four major operations involved in the manufacture of impression fabric: weaving, finishing, slitting, and inking. Some U.S. firms specialize in a single major operation, but in most cases the firms involved perform more than one of these operations. An exception is the inking operation—no domestic firm which inks impression fabric performs any of the other major operations. Six domestic firms weave impression fabric. One weaver also performs finishing and slitting operations; the other five weavers sell the bulk of their output, some of which is finished internally, to two domestic firms for slitting. In addition to these firms, there are three U.S. companies (called converters for the purpose of this investigation) that take title to either imported or domestically produced impression fabric and arrange to have the fabric slit, and sometimes finished, on contract.

In making our determination in this investigation, we have considered the industry most likely to be adversely affected by LTFV imports of impression fabric of manmade fiber to consist of the U.S. facilities devoted to the slitting of such fabric. In 1978, three U.S. firms slit impression fabric for sale, and a fourth firm slit impression fabric on a commission basis.

LIVELIHOOD OF INJURY BY REASON OF LTFV IMPORTS

Treasury found an average dumping margin of 7.5 percent on sales made by Nissei Co., Ltd. Currently, Nissei's prices are 5 to 10 percent lower than those of domestic producers, a margin of underselling that effectively prevents U.S. slitters from raising prices. Despite increases in manufacturing costs, U.S. producers' prices for most widths of slit impression fabric in October-December 1977 were the same as or lower than they were in January-June 1975. Price suppression in this industry is also indicated by the fact that while U.S. slitters' selling prices for impression fabric have remained nearly constant since mid-1974, the wholesale price index for textile goods and wearing apparel has risen by about 12 percent. Many purchasers of slit impression fabric report that price is their primary consideration in placing orders. They often tell prospective suppliers what prices must be offered to obtain their business, and U.S. producers almost always meet this price. The depressed condition of the Japanese synthetic fiber industry makes it likely that Nissei will continue to offer impression fabric for sale in the United States at LTFV prices. Furthermore, in the absence of an affirmative finding by this Commission, it is likely that other Japanese producers will find it necessary to sell at LTFV in order to maintain or increase their share of the U.S. market in competition with the LTFV sales by Nissei.

Despite an expanding U.S. market as was forecast in the Commission's earlier antidumping investigation,[2] profits of U.S. producers of slit impression fabric declined during 1974-76 and rose only slightly in 1977 to a level still well below the levels in 1974 and 1975. The Commission verified that U.S. producers lost substantial revenue as a result of lowering their prices to meet the LTFV prices of Nissei. Such losses combined with losses resulting from sales lost outright to Nissei contributed materially to the reduction in net operating profit of the three major U.S. slitters.

We believe that the market penetration of imports from Nissei is artificially low in 1977 because of the pending antidumping proceeding which commenced with the filing of the petition with Treasury on February 7, 1977, and was permitted to continue when this Commission determined on April 11, 1977, that there was a reasonable indication that an industry in the United States was being or was likely to be injured by reason of the importation of impression fabric of manmade fiber from Japan into the United States at LTFV. Nissei's west coast distributor refused to accept any orders for impression fabric during April-June 1977.

Nissei's existing production capacity, based on a one-shift-a-day operating level and 1977's product mix, exceeds its 1977 exports to the United States by more than 600 percent, clearly indicating an ability to capture an increased share of the U.S. market. Less than 50 percent of U.S. producers' capacity to produce slit impression fabric was utilized in either 1976 or 1977. Any significant increase in Nissei's exports to the United States would tend to intensify the competitive conditions that currently exist in the U.S. market and further contribute to the decline in U.S. producers'

[2]*Impression Fabric of Manmade Fiber From Japan * * * Investigation No. AA1921-116 * * ** TC Publication 577, 1973.

profits and the underutilization of their productive capacity.

CONCLUSION

On the basis of the information obtained in the Commission's investigation, we conclude that an industry in the United States is likely to be injured by reason of the importation of impression fabric of manmade fiber from Japan sold at LTFV within the meaning of the Antidumping Act, 1921, as amended.

STATEMENT OF REASONS FOR THE NEGATIVE DETERMINATION OF CHAIRMAN DANIEL MINCHEW AND COMMISSIONER BILL ALBERGER

In order for the U.S. International Trade Commission (Commission) to find in the affirmative in an investigation under the Anti-dumping Act, 1921, as amended (19 U.S.C. 160(a)), it is necessary to find that an industry in the United States is being or is likely to be injured, or is prevented from being established,[3] and the injury or likelihood thereof must be by reason of imports at less than fair value (LTFV).

DETERMINATION

On the basis of the information obtained in this investigation, we determine that an industry in the United States is not being and is not likely to be injured by reason of the importation of impression fabric of manmade fiber from Japan which is being, or is likely to be, sold at LTFV.

THE IMPORTED ARTICLE AND THE DOMESTIC INDUSTRY

Impression fabric of manmade fiber is closely woven nylon fabric suitable for making typewriter or machine ribbon.

There are four major operations involved in the manufacture of impression fabric: weaving, finishing, slitting, and inking. Some U.S. firms specialize in a single major operation, but in most cases the firms involved perform more than one of these operations. An exception is the inking operation—no domestic firm which inks impression fabric performs any of the other major operations. Six domestic firms weave impression fabric. One weaver also performs finishing and slitting operations; the other five weavers sell the bulk of their output, some of which is finished internally, to two domestic firms for slitting. In addition, there are three companies (called converters for purposes of this investigation) that take title to either imported or domestically produced impression fabric and arrange to have the fabric slit, and sometimes finished, on contract.

In making our determination, we have considered the industry most likely to be adversely affected by LTFV imports to consist of the U.S. facilities devoted to the slitting of such fabric. In 1978, three U.S. firms slit impression fabric for sale, and a fourth firm slit impression fabric on a commission basis.

LTFV SALES

The Department of the Treasury (Treasury) investigation on impression fabric of manmade fiber from Japan covered sales made during the period October 1, 1976, through March 31, 1977. The investigation was limited to three manufacturers which together accounted for approximately 99.6 percent of all Japanese-made impression fabric of manmade fiber sold for export to the United States. They are Asahi Chemical Industry Co., Ltd., Osaka, Japan (Asai); Nissei Co., Ltd., Osaka, Japan (Nissei); and Shirasaki Tape Co., Ltd., Fuki, Japan (Shirasaki). Fair-value comparisons were made on approximately 98 percent of the sales to the United States by these manufacturers.

Sales by Asahi accounted for about half of the total quantity of Japanese sales to the United States during the period. Margins found ranged from 0.1 percent to 1 percent. Treasury considered this to be de minimis and excluded Asahi from the LTFV finding.

Shirasaki accounted for about one-third of the quantity of Japanese sales to the United States during the period. Margins ranging from 0.3 percent to 4.3 percent (weighted average of 0.34 percent) were found. This was considered minimal in relation to total volume of sales, and Shirasaki was also excluded.

Sales by Nissei accounted for about one-eighth of the total. Margins ranged from 3 percent to 14 percent (weighted average of 7.5 percent) on 92 percent of Nissei's sales.

THE QUESTION OF INJURY OR LIKELIHOOD THEREOF BY REASON OF SALES

Imports and market share.—Imports from Nissei (the only Japanese exporter found by Treasury to have LTFV sales) declined by 38 percent from 1975 to 1976 and again by the same percentage in 1977. The ratio of imports-to-consumption also declined in those years; it was less than 3 percent in 1977. From 1975 to 1977 the share of the U.S. market obtained by three U.S. converters of impression fabric more than doubled. In 1977, the converters' share of the market was nearly five times the share held by Nissei. Thus, if there has been any injury to the U.S. slitters, it is attributable to competition from these converters.

Capacity utilization.—Utilization of U.S. producers' capacity to slit impression fabric declined from 70 percent in 1974 to 41 percent in 1976 and then recovered to 46 percent in 1977. This decline in slitters' capacity utilization is attributable, however, to overexpansion of production facilities and not LTFV import competition. Slitters' capacity exceeded apparent U.S. consumption of slit fabric by about one-third in 1974 and by nearly 100 percent in 1977.

Shipments and inventory.—Domestic producers' shipments of slit impression fabric rose from 36.7 million square yards in 1975 to 41 million square yards in 1976 and 45.3 million square yards in 1977, exceeding the previous record of 43.5 million square yards shipped in 1974. As a percentage of U.S. producers' shipments, inventories of slit fabric have remained nearly constant at 7 percent (less than 1 month's supply) during 1975–77.

Employment.—The number of production and related workers engaged in slitting impression fabric fell in 1975 but held nearly constant in 1976 and rose 16 percent in 1977. Even though the number of workers was lower in 1977 than in 1974, output per worker increased sharply from 118 square yards per hour in 1974 to 146 square yards per hour in 1977, an increase of 24 percent.

Profit-and-loss experience.—Operating profits of the three primary U.S. slitters fell in 1976 from the relatively high levels of 1974 and 1975, and then increased by 19 percent in 1977. All three slitters were profitable in each of the four years 1974–77. In 1976, when profits were at the lowest level during the period, the ratio of net operating profit to net sales for the three slitters was 7.6 percent whereas the average operating return of companies in the broadwoven fabric industry was only 4.9 percent.[4]

Prices.—Prices of U.S.-made slit impression fabric increased sharply in 1974 and then remained relatively stable during 1975–77. This price trend closely followed the price trend for broadwoven impression fabric, the raw material that accounts for approximately 75 percent of the total costs of producing the slit fabric. Thus, the level of U.S. producers' prices in 1975–77 is largely attributable to the stability of the prices for the broadwoven fabric and not to the diminishing imports from Nissei.

Lost sales.—During 1975–77, exports by Nissei to the United States declined and U.S. producers' shipments increased, indicating that any sales lost

[3] Prevention of establishment of an industry is not an issue in this investigation and will not be discussed further.

[4] Aggregate data for 89 companies in the broadwoven fabric industry for accounting years ending June 30, 1976 to Mar. 31, 1977, as published by Robert Morris Associates, *Annual Statement Studies 1977*, p. 94.

to Nissei neither increased Nissei's market share nor decreased that of U.S. producers. U.S. converters increased their sales significantly during this period and increased their market share by 128 percent. In addition, some purchasers indicated that orders were sometimes placed for Japanese fabric because of quality.

Likelihood of injury.—Information compiled in this investigation does not reveal that an industry in the United States is being or is likely to be injured by LTFV imports. To the contrary, there is evidence of a healthy recovery from the level of operations in the recession year 1975. In view of the increasing trends noted above with respect to U.S. producers' shipments, employment, and profitability and the decreasing trend of LTFV imports, we do not feel that there is likelihood of injury to the U.S. industry. Furthermore, discussions pending between the governments of the United States and Japan with respect to Japanese exports of impression fabric to the United States may preclude any significant increase in the quantity of such exports.

CONCLUSION

It is clear from the above considerations that the U.S. industry slitting impression fabric in the United States is not being and is not likely to be injured by reason of the importation of impression fabric of manmade fiber from Japan found by Treasury to be, or likely to be, sold in the United States at LTFV. Therefore, we find in the negative.

By order of the Commission:

Issued: March 29, 1978.

KENNETH R. MASON,
Secretary.

[FR Doc. 78-8668 Filed 4-3-78; 8:45 am]

[7020-02]

[TA-203-4; TA-131(b)-2; 332-100]

CERTAIN CERAMIC ARTICLES

Consolidated Investigations and Hearings

Notice is hereby given that the United States International Trade Commission on March 30, 1978, at the request of the Special Representative for Trade Negotiations, instituted consolidated investigations under sections 203(i)(2) and 131(b) of the Trade Act of 1974 (19 U.S.C. 2253(i)(2) and 19 U.S.C. 2151(b), respectively) and section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) with respect to certain ceramic articles. The letter from the Special Representative requesting the investigations is attached hereto and made a part thereof.

Section 203 investigation. The investigation under section 203(i)(2) of the Trade Act is for the purpose of advising the President of the Commission's judgment as to the probable economic effect on the industry concerned of the immeditate termination of the relief provided for by Proclamation 4436 of April 30, 1976, with respect to the ceramic articles provided for in items 923.01, 923.07, 923.13, and 923.15 of the Appendix to the Tariff Schedules of the United States (TSUS).

Section 131(b) investigation. The investigation under section 131(b) of the Trade Act is for the purpose of advising the President of the Commission's judgment—

(a) With respect to each article described in List I[1] of the Special Representative's notice, as to the probable economic effect of the continuance or reduction of United States duties on domestic industries producing like or directly competitive articles and on consumers, and

(b) With respect to all articles provided for in TSUS items 533.11 through 533.77, described in List II[2] of the Special Representative's notice, the probable economic effect which any increases in duty necessary to implement the nomenclature proposal provided by the Commission under Paragraph 1 of his notice would have on domestic industries producing like or directly competitive articles and on consumers.

Section 332 investigation. The investigation under section 332(g) of the Tariff Act of 1930 is for the purpose of providing the Special Representative—

with a proposal on how the nomenclature and rates of duty for ceramic articles provided for in TSUS items 533.11 through 533.77 could be revised so as to close tariff loopholes, eliminate provisions based on price levels that no longer exist, and generally bring the nomenclature into conformance with commercial conditions prevailing at the present time.

A proposed draft nomenclature for such ceramic articles is attached to this notice and made a part thereof.

Consolidated Public Hearings Ordered. Public hearings in connection with these consolidated investigations will be held in the Commission's Hearing Room in the U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C., beginning at 9:30 a.m., e.d.t., Monday, May 1, 1978. Persons requesting to appear at the hearings should advise the Secretary of the Commission, in writing, at his office in Washington, 701 E Street NW., Washington, D.C. 20436, not later than noon, Wednesday, April 26, 1978.

The hearings will proceed continuously and consecutively. The Commission will hear testimony and receive information first with respect to the section 203(i)(2) investigation; second with respect to the section 131(b) investigation; and third with respect to the section 332(g) investigation. It is requested that persons submitting requests to appear indicate the hearing or hearings for which the appearance is requested.

Issued: March 30, 1978.

By order of the Commission.

KENNETH R. MASON,
Secretary.

THE SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS,
Washington.

Hon. DANIEL MINCHEW,
Chairman, U.S. International Trade Commission, Washington, D.C. 20436

DEAR CHAIRMAN MINCHEW: In announcing his decision on April 30, 1976, to terminate import relief and restore concession rates of duty on imported ceramic tableware, President Ford directed the Special Trade Representative to review the classifications and rates of duty on ceramic dinnerware and related articles in the Tariff Schedules of the United States (TSUS) and to determine if changes are necessary to close tariff loopholes and change obsolete descriptions brought about by currency changes and inflation, and to enter into negotiations to modify trade agreement concessions on these articles in order to make such changes as would be determined necessary. The ceramic tableware provisions of the TSUS were subsequently reviewed by the Trade Policy Staff Committee, which concluded that a renegotiation of virtually all of the provisions is necessary, including those items which are still subject to increased rates of duty.

If possible, it is our intention to handle the modification of the tableware provisions in the context of the Multilateral Trade Negotiations. However, before we can proceed further with this project, we need the following advice from the Commission:

1. Under the provisions of section 332(g) of the Tariff Act of 1930, I request, at the direction of the President, that the Commission provide me with a proposal on how the nomenclature and rates of duty for ceramic articles provided for in TSUS items 533.11 through 533.77 could be revised so as to close tariff loopholes, eliminate provisions based on price levels that no longer exist, and generally bring the nomenclature into conformance with commercial conditions prevailing at the present time.

2. Pursuant to section 203(i)(2) of the Trade Act of 1974 and section 5(a) of Executive Order 11846, I request that the Commission advise the President, through the Special Trade Representative, of its judgment as to the probable economic effect on the domestic industry concerned of the immediate termination of import relief on the ceramic articles temporarily provided for in TSUS items 923.01, 923.07, 923.13, and 923.15.

3. In accordance with section 131(a) of the Trade Act of 1974 and section 4(c) of Execu-

---

[1] List I attached to the STR request covers all articles for which the President originally proclaimed import relief pursuant to the provisions of section 351 of the Trade Expansion Act of 1962. In view of this import relief action, the President has not previously requested from the Commission "probable economic effect" advice on these articles.

[2] List II attached to the STR request covers the current permanent provisions of items 533.11 through 533.77 in subpart C of Part 2 of schedule 5 of the TSUS.

tive Order 11846, I am furnishing the Commission herewith the notice, which is being published in the Federal Register, that the ceramic articles initially excluded from the original notice of international trade negotiations, issued in January 1975, may in the future be considered in such negotiations. I request that the Commission provide me with its advice, in accordance with section 131(b) of the Act—

(a) With respect to each article described in List I of the present notice, as to the probable economic effect of the continuance or reduction of United States duties on domestic industries producing like or directly competitive articles and on consumers, and

(b) With respect to all articles provided for in TSUS items 533.11 through 533.77, described in List II of the present notice, the probable economic effect which any increases in duty necessary to implement the nomenclature proposal provided by the Commission under paragraph 1 above would have on domestic industries producing like or directly competitive articles and on consumers.

I would appreciate your supplying me with the above advice as expeditiously as possible, but not later than June 1, 1978.

Sincerely,

ROBERT S. STRAUSS.

OFFICE OF THE SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS

NOTICE OF ARTICLES THAT MAY BE CONSIDERED FOR MODIFICATION OR CONTINUANCE OF UNITED STATES DUTIES OR ADDITIONAL DUTIES

1. In conformity with Section 131 of the Trade Act of 1974 (19 U.S.C. 2151), notice is hereby given of articles that may be considered for modification or continuance of United States duties, or additional duties. These articles are set forth in List I and List II below.

2. Some of the articles in List I and parts of some of the items in List II (those that are marked with an asterisk) currently are subject to import relief provided initially pursuant to Section 351 of the Trade Expansion Act of 1962 (19 U.S.C. 1981) and extended pursuant to Section 203(h)(3) of the Trade Act of 1974 (19 U.S.C. 2253(h)(3)). In accordance with Section 127(b) of the Trade Act of 1974 (19 U.S.C. 2137), *the President is reserving such articles, or parts of items, from international trade negotiations as long as any import relief action is in effect with respect to them.* This notice of the possible future consideration of such articles or parts or items in international trade negotiations, and the request for advice of the U.S. International Trade Commission referred to in paragraph 3 below, are being given to prepare for the possibility of negotiations with respect to them should the import relief action terminate.

3. The U.S. International Trade Commission is being requested to furnish its advice, pursuant to Section 131 of the Trade Act of 1974, as to the probable economic effects of (a) modifications or continuances of existing import duties for the articles in List I; and (b) increases in existing duties, incidental to modifications in the tariff nomenclature, for the items in List II.

ROBERT S. STRAUSS,
Special Representative for Trade Negotiations.

LIST I

Articles which will be considered for modification or continuance of the existing[1] United States duties, or additional duties, to the extent permitted by sections 101(a), 101(b), 101(c), and 109 of the Trade Act.

TSUS item[2] and articles

Articles chiefly used for preparing, serving, or storing food or beverages, or food or beverage ingredients:

Of fine-grained earthenware (except articles provided for in items 533.14 and 533.16 of the Tariff Schedules of the United States) or of fine-grained stoneware:

Available in specified sets:

533.28 pt.* In any pattern for which the aggregate value of the articles listed in headnote 2(b) of subpart C, part 2 of schedule 5 of the Tariff Schedules of the United States in over $12 but not over $22.

Not available in specified sets:

533.31 pt. Steins and mugs, if valued not over $3.60 per dozen.

Other articles:

533.33 pt. Cups valued not over $0.50 per dozen; saucers valued not over $0.30 per dozen; plates not over 9 inches in maximum diameter and valued not over $0.50 per dozen; plates over 9 but not over 11 inches in maximum diameter and valued not over $1 per dozen; and creamers, sugars, vegetable dishes or bowls, platters or chop dishes, butter dishes or trays, gravy boats or gravies and stands, any of the foregoing articles valued not over $1 per dozen.

533.35 pt. Cups valued over $0.50 but not over $1 per dozen; saucers valued over $0.30 but not over $0.55 per dozen; plates not over 9 inches in maximum diameter and valued over $0.50 but not over $0.90 per dozen; plates over 9 but not over 11 inches in maximum diameter and valued over $1 but not over $1.55 per dozen; and creamers, sugars, vegetable dishes or bowls, platters or chop dishes, butter dishes or trays, gravy boats or gravies and stands, any of the foregoing articles valued over $1 but not over $2 per dozen.

533.36 pt. Cups valued over $1 but not over $1.70 per dozen; saucers valued over $0.55 but not over $0.95 per dozen; plates not over 9 inches in maximum diameter and valued over $0.90 but not over $1.55 per dozen; plates over 9 but not over 11 inches in maximum diameter and valued over $1.55 but not over $2.65 per dozen; and creamers, sugars, vegetable dishes or bowls, platters or chopdishes, butter dishes or trays, gravy boats or gravies and stands, any of the foregoing articles valued over $2 but not over $3.40 per dozen.

533.38 pt.* Cups valued over $1.70 but not over $3.10 per dozen; saucers valued over $0.95 but not over $1.75 per dozen; plates not over 9 inches in maximum diameter and valued over $1.55 but not over $2.85 per dozen; plates over 9 but not over 11 inches in maximum diameter and valued over $2.65 but not over $4.85 per dozen; and creamers, sugars, vegetable dishes or bowls, platters or chop dishes, butter dishes or trays, gravy boats or gravies and stands, any of the foregoing articles valued over $3.40 but not over $6.20 per dozen.

LIST II

Articles which may be considered for increases in existing duties, to the extent permitted by sections 101(a) and 101(c) of the Trade Act, incidental to modifications in the tariff nomenclature.

TSUS item and articles

Articles chiefly used for preparing, serving, or storing food or beverages, or food or beverage ingredients:

533.11 Of course-grained earthenware, or of coarse-grained stoneware.

Of fine-grained earthenware, whether or not decorated, having a reddish-colored body and a lustrous glaze which, on teapots, may be any color, but which, on other articles, must be mottled, streaked, or solidly colored brown to black with metallic oxide or salt;

533.14 Valued not over $1.50 per dozen articles.

533.16 Valued over $1.50 per dozen articles.

Of fine-grained earthenware (except articles provided for in items 533.14 and 533.16) or of fine-grained stoneware:

Available in specified sets:

533.23 In any pattern for which the aggregate value of the articles listed in headnote 2(b) of subpart C, part 2 of schedule 5 of the Tariff Schedules of the United States is not over $3.30.

533.25 In any pattern for which the aggregate value of the articles listed in headnote 2(b) of subpart C, part 2 of schedule 5 of the Tariff Schedules of the United States is over $3.30 but not over $7.

533.26 In any pattern for which the aggregate value of the articles listed in headnote 2(b) of subpart C, part 2 of schedule 5 of the Tariff Schedules of the United States is over $7 but not over $12.

533.28* In any pattern for which the aggregate value of the articles listed in headnote 2(b) of subpart C, part 2 of schedule 5 of the Tariff Schedules of the United States is over $12.

Not available in specified sets:

[1] The term "existing" is used herein as defined in section 601(7) of the Trade Act: "The term 'existing' means (A) when used, without the specification of any date, with respect to any matter relating to entering into or carrying out a trade agreement or other action authorized by this Act, existing on the day on which such trade agreement is entered into or such other action is taken; and (B) when used with respect to a rate of duty (however established, and even though temporarily suspended by Act of Congress or otherwise) set forth in rate column numbered 1 of the schedules 1 through 7 of the Tariff Schedules of the United States on the date specified or (if no date is specified) on the day referred to in clause (A)."

[2] Tariff Schedules of the United States (19 U.S.C. 1202).

* These articles are currently subject to import relief provided initially pursuant to section 351 of the Trade Expansion Act of 1962 (19 U.S.C. 1981) and extended pursuant to Section 203(h)(3) of the Trade Act of 1974 (19 U.S.C. 2253(h)(3)).

* Part of this item is currently subject to import relief provided initially pursuant to section 351 of the Trade Expansion Act of 1962 (19 U.S.C. 1981) and extended pursuant to Section 203(h)(3) of the Trade Act of 1974 (19 U.S.C. 2253(h)(3)).

533.31 Steins, mugs, candy boxes, decanters, punch bowls, pretzel dishes, tidbit dishes, tiered servers, and bonbon dishes.
533.41 Of bone chinaware.
Of nonbone chinaware or of subporcelain:
533.51 Hotel or restaurant ware and other ware not household ware.
Household ware available in specified sets:
533.63 In any pattern for which the aggregate value of the articles listed in headnote 2(b) of subpart C, part 2 of schedule 5 of the Tariff Schedule of the United States is not over $10.
533.65 In any pattern for which the aggregate value of the articles listed in headnote 2(b) of subpart C, part 2 of schedule 5 of the Tariff Schedule of the United States is over $10 but not over $24.
533.66 In any pattern for which the aggregate value of the articles listed in headnote 2(b) of subpart C, part 2 of schedule 5 of the Tariff Schedule of the United States is over $24 but not over $56.
533.68 In any pattern for which the aggregate value of the articles listed in headnote 2(b) of subpart C, part 2 of schedule 5 of the Tariff Schedule of the United States is over $56.
533.69 Not covered by item 533.63, 533.65, 533.66, or 533.68, and in any pattern for which the aggregate value of the articles listed in headnote 2(c) of subpart C, part 2 of schedule 5 of the Tariff Schedule of the United States is over $8.
Household ware not covered by item 533.63, 533.65, 533.66, 533.68,or 533.69:
533.71 Steins, mugs, candy boxes, decanters, punch bowls, pretzel dishes, tidbit dishes, tiered servers, and bonbon dishes.
Other articles:
533.73* Cups valued not over $1.35 per dozen, saucers valued not over $0.90 per dozen, plates not over 9 inches in maximum diameter and valued not over $1.30 per dozen, plates over 9 but not over 11 inches in maximum diameter and valued not over $2.70 per dozen, and other articles valued not over $4.50 per dozen.
533.75* Cups valued over $1.35 but not over $4 per dozen, saucers valued over $0.90 but not over $1.90 per dozen, plates not over 9 inches in maximum diameter and valued over $1.30 but not over $3.40 per dozen, plates over 9 but not over 11 inches in maximum diameter and valued over $2.70 but not over $6 per dozen, and other articles valued over $4.50 but not over $11.50 per dozen.
533.77* Cups valued over $4 per dozen, saucers valued over $1.90 per dozen, plates not over 9 inches in maximum diameter and valued over $3.40 per dozen, plates over 9 but not over 11 inches in maximum diameter and valued over $6 per dozen, and other articles valued over $11.50 per dozen.

The attachment "Tentative Nomenclature Proposal" is provided to project the issues involved in the President's request received March 13, 1978, for—

A proposal on how the nomenclature and rates of duty for ceramic articles provided for in TSUS items 533.11 through 533.77 could be revised so as to close tariff loopholes, eliminate provisions based on price levels that no longer exist, and generally bring the nomenclature into conformance with commercial conditions prevailing at the present time.

The TSUS items 533.11 through 533.77 referred to in the President's request are ceramic "articles chiefly used for preparing, serving, or storing food or beverages, or food or beverage ingredients" which are included in subpart C of part 2 of schedule 5 of the TSUS. The basic headnote definitions of ceramic articles in part 2 and the basic headnote concept of "available in specified sets" set forth in subpart C are believed to be sound and commercially acceptable. The tariff "loopholes" and obsolescence involved in these provisions are the direct result of the inadequacy of value as a descriptive technique to distinguish between articles which are inherently the same, but are distinguishable only by their source or brand name.

With the advent and continuation of the Trade-agreements program, the predecessor tariff provisions covering the articles here involved were subdivided into a melange of tariff descriptions distinguishing between specific articles on the bases of their sizes and values. Predictably, inflation and the ingenuity of importers resulted in increasing obsolescence and the introduction of tariff avoidance practices.

Although these problems were addressed in the development of the TSUS provisions, they were only partially and, due to continuing inflation, temporarily solved. Ideally, all the provisions attempting to distinguish between articles on the basis of their values should be eliminated for the reason that they are inexact, difficult to administer, and generate unreliable data for analytical purposes. In the attached tentative proposal, product distinctions based upon value would be reduced to four, all of which would be applicable to ceramic articles "available in specified sets," viz., two provisions for earthenware and stoneware and two for chinaware and subporcelain. The specifics of the tentative proposal are outlined below.

On the attached sheets, there are reproduced: (1) the current permanent tariff provisions applicable to earthenware and stoneware (TSUS items 533.11 through 533.38), and the tentative nomenclature proposal for such articles; and (2) the current permanent tariff provisions applicable to chinaware and subporcelain (TSUS items 533.41 through 533.77), and the tentative nomenclature proposal therefor.

The tentative proposals would involve the following changes in the current provisions:

(a) As a "housecleaning" measure, items 533.14 and 533.16 would be replaced by a single item 533.15 without rate change.

(b) The four items 533.23 through 533.28 applicable to articles "available in specified sets" would be replaced by two new items 533.22 and 533.24. Thus, all such stoneware and earthenware would be in two rate provisions differentiated, as at present, on the basis of the aggregate value of the articles in a "norm" set.

(c) Item 533.31 would be replaced by a new item 533.32 that would be limited to steins and mugs which are the only articles presently named in item 533.31 that are being imported in commercially significant quantities.

(d) The four items 533.33 through 533.38 would be replaced by a single new provision item 533.37 that would apply to all other articles of stoneware and earthenware "not available in specified sets", including the items enumerated, except steins and mugs, in item 533.31.

(e) The four items 533.63 through 533.68 applicable to articles "available in specified sets" would be replaced by two new items 533.62 and 533.64. Thus, all such chinaware and subporcelain would be in two rate provisions differentiated, as at present, on the basis of the aggregate value of the articles in a "norm" set.

(f) Item 533.69 and three items 533.73 through 533.77 would be replaced by a single new provision, item 533.74,[1] that would apply to "articles available in specified sets not covered by items 533.63 through 533.68" and all other chinaware and subporcelain "not available in specified sets".

(g) Conforming changes in subpart C headnote 2 would be made, i.e., (A) the parenthetical "(items 533.23, 533.25, 533.26, 533.28, 533.63, 533.65, 533.66, 533.68, and 533.69)" would be deleted from lines two through four of paragraph (a) and the parenthetical "(items 533.22, 533.24, 533.62, and 533.64)" would be inserted; (B) "or (c)" would be deleted from the next to the last line of paragraph (a); (C) the phrase "items 533.23, 533.25, 533.26, 533.28, 533.63, 533.65, 533.66, and 533.68" would be deleted from lines three and four of paragraph (b) and the phrase "items 533.22, 533.24, 533.62, and 533.64" would be inserted; (D) paragraph (c) would be deleted and paragraph (d) would be redesignated as "(c)"; and (E) headnote 3 would be deleted.

It can be seen from the foregoing that the major tentative nomenclature proposals are those described in (b) and (d) for stoneware and earthenware and in (e) and (f) for chinaware and subporcelain.

Presumably, the ceramic articles available in specified sets provided for in lower value brackets of new TSUS items 533.22 and 533.62 would be those which are the most directly competitive with domestic production and

*Part of this item is currently subject to import relief provided initially pursuant to section 351 of the Trade Expansion Act of 1962 (19 U.S.C. 1981) and extended pursuant to Section 203(h)(3) of the Trade Act of 1974 (19 U.S.C. 2253(h)(3)).

[1]Of the nine individual articles described in TSUS item 533.71, steins and mugs are the only ones imported in commercially significant quantities. It would be desirable to provide for a new TSUS item 533.72 limited to steins and mugs, with the other named articles falling into proposed new TSUS item 533.74. However, such proposal is not being made for the reason that the proposal would require a change in the column numbered 2 rate of duty for such other named articles which change would require legislative approval.

would be made dutiable at higher rates than would the products provided for in the higher value brackets of TSUS items 533.24 and 533.64. The effectiveness of the new provisions would depend upon the extent to which realistic value brackets were established for these provisions taking into account the current and anticipated impact of inflation on U.S. markets for ceramic articles.

New TSUS items 533.37 and 533.74 would not only eliminate a number of tariff descriptions based upon the sizes and values of individual ceramic articles, but would provide an opportunity to establish for such TSUS item a rate of duty the same as would be made applicable respectively for the lower value brackets of new TSUS items 533.22 and 533.62. This arrangement would greatly simplify the nomenclature, facilitate customs administration and also would eliminate the "loopholes" inherent in the current permanent provisions.

CURRENT PERMANENT PROVISIONS FOR EARTHENWARE AND STONEWARE

TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1978)

SCHEDULE 5. - NONMETALLIC MINERALS AND PRODUCTS
Part 2. - Ceramic Products

Item	Articles	Rates of Duty	
		1	2
	Articles chiefly used for preparing, serving, or storing food or beverages, or food or beverage ingredients:		
533.11	Of coarse-grained earthenware, or of coarse-grained stoneware.....	2.5% ad val.	15% ad val.
	Of fine-grained earthenware, whether or not decorated, having a reddish-colored body and a lustrous glaze which, on teapots, may be any color, but which, on other articles, must be mottled, streaked, or solidly colored brown to black with metallic oxide or salt:		
533.14	Valued not over $1.50 per dozen articles.....	6% ad val.	25% ad val.
533.16	Valued over $1.50 per dozen articles.....	6% ad val.	25% ad val.
	Of fine-grained earthenware (except articles provided for in items 533.14 and 533.16) or of fine-grained stoneware:		
	Available in specified sets:		
533.23	In any pattern for which the aggregate value of the articles listed in headnote 2(b) of this subpart is not over $3.30.....	5¢ per doz. pcs. + 14% ad val. (14.3 AVE)	10¢ per doz. pcs. + 50% ad val.
533.25	In any pattern for which the aggregate value of the articles listed in headnote 2(b) of this subpart is over $3.30 but not over $7.....	10¢ per doz. pcs. + 21% ad val. (21.8 AVE)	10¢ per doz. pcs. +.50% ad val.
533.26	In any pattern for which the aggregate value of the articles listed in headnote 2(b) of this subpart is over $7 but not over $12.....	10¢ per doz. pcs. + 21% ad val. (26.1 AVE)	10¢ per doz. pcs. + 50% ad val.
533.28	In any pattern for which the aggregate value of the articles listed in headnote 2(b) of this subpart is over $12.....	5¢ per doz. pcs. + 10.5% ad val. 1/ (11.4 AVE)	10¢ per doz. pcs. + 50% ad val.

1/ Provision subject to temporary tariff adjustment modification (10¢ per doz. pcs. + 21% ad val.)

CURRENT PERMANENT PROVISIONS FOR EARTHENWARE AND STONEWARE

TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1978)

SCHEDULE 5. - NONMETALLIC MINERALS AND PRODUCTS
Part 2. - Ceramic Products

Item	Articles	Rates of Duty	
		1	2
	Articles chiefly used for preparing, serving, etc. (con.):		
	Of fine-grained earthenware, etc. (con.):		
	Not available in specified sets:		
533.31	Steins, mugs, candy boxes, decanters, punch bowls, pretzel dishes, tidbit dishes, tiered servers, and bonbon dishes.....	5¢ per doz. pcs. + 12.5% ad val. (13.6 AVE)	10¢ per doz. pcs. + 50% ad val.
	Other articles:		
533.33	Cups valued not over $0.50 per dozen, saucers valued not over $0.30 per dozen, plates not over 9 inches in maximum diameter and valued not over $0.50 per dozen, plates over 9 but not over 11 inches in maximum diameter and valued not over $1 per dozen, and other articles valued not over $1 per dozen.....	5¢ per doz. pcs. + 12.5% ad val. (19.6 AVE)	10¢ per doz. pcs. + 50% ad val.
533.35	Cups valued over $0.50 but not over $1 per dozen, saucers valued over $0.30 but not over $0.55 per dozen, plates not over 9 inches in maximum diameter and valued over $0.50 but not over $0.90 per dozen, plates over 9 but not over 11 inches in maximum diameter and valued over $1 but not over $1.55 per dozen, and other articles valued over $1 but not over $2 per dozen.....	10¢ per doz. pcs. + 21% ad val. (27.5 AVE)	10¢ per doz. pcs. + 50% ad val.
533.36	Cups valued over $1 but not over $1.70 per dozen, saucers valued over $0.55 but not over $0.95 per dozen, plates not over 9 inches in maximum diameter and valued over $0.90 but not over $1.55 per dozen, plates over 9 but not over 11 inches in maximum diameter and valued over $1.55 but not over $2.65 per dozen, and other articles valued over $2 but not over $3.40 per dozen.....	10¢ per doz. pcs. + 21% ad val. (24.6 AVE)	10¢ per doz. pcs. + 50% ad val.
533.38	Cups valued over $1.70 per dozen, saucers valued over $0.95 per dozen, plates not over 9 inches in maximum diameter and valued over $1.55 per dozen, plates over 9 but not over 11 inches in maximum diameter and valued over $2.65 per dozen, and other articles valued over $3.40 per dozen.....	5¢ per doz. pcs. + 11% ad val. 1/ (11.6 AVE)	10¢ per doz. pcs. + 50% ad val.

1/ Provision subject to temporary tariff adjustment modification (10¢ per doz. pcs. + 21% ad val.)

TENTATIVE NOMENCLATURE PROPOSAL
FOR EARTHENWARE AND STONEWARE

Item	Articles	Rates of Duty	
		1	2
	Articles chiefly used for preparing, serving, or storing food or beverages, or food or beverage ingredients:		
533.11	Of coarse-grained earthenware, or of coarse-grained stoneware.....	2.5% ad val.	15% ad val.
533.15	Of fine-grained earthenware, whether or not decorated, having a reddish-colored body and a lustrous glaze which, on teapots, may be any color, but which on other articles, must be mottled, streaked, or solidly colored brown to black with metallic oxide or salt.....	6% ad val.	25% ad val.
	Of fine-grained earthenware (except articles provided for in item 533.15) or of fine-grained stoneware:		
	Available in specified sets:		
533.22	In any pattern for which the aggregate value of the articles listed in headnote 2(b) of this subpart is not over $ 1/	1/	10¢ per doz. pcs. + 50% ad val.
533.24	In any pattern for which the aggregate value of the articles listed in headnote 2(b) of this subpart is over $ 1/	5¢ per doz. pcs. + 10.5% ad val.	10¢ per doz. pcs. + 50% ad val.
	Not available in specified sets:		
533.32	Steins and mugs.....	5¢ per doz. pcs. + 12.5% ad val.	10¢ per doz. pcs. + 50% ad val.
533.37	Other articles.....	1/	10¢ per doz. pcs. + 50% ad val.

1/ The values and/or rates of duty to be determined by the President.

CURRENT PERMANENT PROVISIONS FOR CHINAWARE AND SUBPORCELAIN

TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1978)

SCHEDULE 5. - NONMETALLIC MINERALS AND PRODUCTS
Part 2. - Ceramic Products

Item	Articles	Rates of Duty	
		1	2
	Articles chiefly used for preparing, serving, etc. (con.):		
533.41	Of bone chinaware	17.5% ad val.	10¢ per doz. pcs. + 70% ad val.
	Of nonbone chinaware or of subporcelain:		
533.51	Hotel or restaurant ware and other ware not household ware	10¢ per doz. pcs. + 45% ad val. (48.2 AVE)	10¢ per doz. pcs. + 70% ad val.
	Household ware available in specified sets:		
533.63	In any pattern for which the aggregate value of the articles listed in headnote 2(b) of this subpart is not over $10	10¢ per doz. pcs. + 48% ad val. (50.6 AVE)	10¢ per doz. pcs. + 70% ad val.
533.65	In any pattern for which the aggregate value of the articles listed in headnote 2(b) of this subpart is over $10 but not over $24	10¢ per doz. pcs. + 55% ad val. (57.0 AVE)	10¢ per doz. pcs. + 70% ad val.
533.66	In any pattern for which the aggregate value of the articles listed in headnote 2(b) of this subpart is over $24 but not over $56	10¢ per doz. pcs. + 36% ad val. (37.7 AVE)	10¢ per doz. pcs. + 70% ad val.
533.68	In any pattern for which the aggregate value of the articles listed in headnote 2(b) of this subpart is over $56	5¢ per doz. pcs. + 18% ad val. (18.3 AVE)	10¢ per doz. pcs. + 70% ad val.
533.69	Not covered by item 533.63, 533.65, 533.66, or 533.68, and in any pattern for which the aggregate value of the articles listed in headnote 2(c) of this subpart is over $8	5¢ per doz. pcs. + 18% ad val. (18.9 AVE)	10¢ per doz. pcs. + 70% ad val.

CURRENT PERMANENT PROVISIONS FOR CHINAWARE AND SUBPORCELAIN

TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1978)

SCHEDULE 5. - NONMETALLIC MINERALS AND PRODUCTS
Part 2. - Ceramic Products

Item	Articles	Rates of Duty	
		1	2
	Articles chiefly used for preparing, serving, etc. (con.):		
	Of nonbone chinaware or of subporcelain (con.):		
	Household ware not covered by item 533.63, 533.65, 533.66, 533.68, or 533.69:		
533.71	Steins, mugs, candy boxes, decanters, punch bowls, pretzel dishes, tidbit dishes, tiered servers, and bonbon dishes	22.5% ad val.	70% ad val.
533.73	Other articles: Cups valued not over $1.35 per dozen, saucers valued not over $0.90 per dozen, plates not over 9 inches in maximum diameter and valued not over $1.30 per dozen, plates over 9 but not over 11 inches in maximum diameter and valued not over $2.70 per dozen, and other articles valued not over $4.50 per dozen	5¢ per doz. pcs. + 22.5% ad val. 1/ (24.7 AVE)	10¢ per doz. pcs. + 70% ad val.
533.75	Cups valued over $1.35 but not over $4 per dozen, saucers valued over $0.90 but not over $1.90 per dozen, plates not over 9 inches in maximum diameter and valued over $1.30 but not over $3.40 per dozen, plates over 9 but not over 11 inches in maximum diameter and valued over $2.70 but not over $6 per dozen, and other articles valued over $4.50 but not over $11.50 per dozen	5¢ per doz. pcs. + 30% ad val. 2/ (30.9 AVE)	10¢ per doz. pcs. + 70% ad val.
533.77	Cups valued over $4 per dozen, saucers valued over $1.90 per dozen, plates not over 9 inches in maximum diameter and valued over $3.40 per dozen, plates over 9 but not over 11 inches in maximum diameter and valued over $6 per dozen, and other articles valued over $11.50 per dozen	5¢ per doz. pcs. + 17.5% ad val. (18.0 AVE)	10¢ per doz. pcs. + 70% ad val.

1/ Provision subject to temporary tariff adjustment modification (10¢ per doz. pcs. + 48% ad val.)
2/ Provision subject to temporary tariff adjustment modification (10¢ per doz. pcs. + 55% ad val.)

TENTATIVE NOMENCLATURE PROPOSAL
FOR CHINAWARE AND SUBPORCELAIN

Item	Articles	Rates of Duty	
		1	2
	Articles chiefly used for preparing, serving:		
533.41	Of bone china	17.5% ad val.	10¢ per doz. pcs. + 70% ad val.
	Of nonbone chinaware or of subporcelain:		
533.51	Hotel or restaurant ware and other ware not household ware	10¢ per doz. pcs. + 45% ad val.	10¢ per doz. pcs. + 70% ad val.
	Household ware available in specified sets:		
533.62	In any pattern for which the aggregate value of the articles listed in headnote 2(b) of this subpart is not over $ 1/	1/	10¢ per doz. pcs. + 70% ad val.
533.64	In any pattern for which the aggregate value of the articles listed in headnote 2(b) of this subpart is over $ 1/	5¢ per doz. pcs. + 18% ad val.	10¢ per doz. pcs. + 70% ad val.
	Household ware not available in specified sets:		
533.71	Steins, mugs, candy boxes, decanters, punch bowls, pretzel dishes, tidbit dishes, tiered servers, and bonbon dishes	22.5% ad val.	70% ad val.
533.74	Other articles	1/	10¢ per doz. pcs. + 70% ad val.

1/ The values and/or rates of duty to be determined by the President.

[FR Doc. 78-8872 Filed 4-3-78; 8:45 am]

[7020-02]

[TA-201-34]

CERTAIN FISHING TACKLE

Investigation and Hearings

Investigation instituted. Following receipt of a petition on March 21, 1978, filed by the American Fishing Tackle Manufacturers Association and the Tackle Representatives Association, both of Chicago, Ill., the U.S. International Trade Commission, on March 29, 1978, instituted an investigation under section 201(b) of the Trade Act of 1974 (19 U.S.C. 2251(b)) to determine whether snelled hooks; fishing rods and parts thereof; fishing reels and parts thereof; and artificial baits and flies; provided for in items 731.05; 731.15; 731.20 through 731.26, inclusive; and 731.60 of the Tariff Schedules of the United States, are being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.

Public hearing ordered. A public hearing in connection with this investigation will be held in Chicago, Ill., beginning on Tuesday, June 13, 1978. The time and place of the hearing will be announced later. Requests for appearances at the hearing should be received in writing by the Secretary of the Commission at his office in Washington, D.C., not later than noon of the fifth calendar day preceding the hearing at which an appearance is requested.

A prehearing conference in connection with this investigation will be held at 9:30 a.m., e.d.t., on May 30, 1978, in room 117, U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C. 20436.

Inspection of the petition. The petition filed in this matter is available for public inspection at the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436 and at the New York City office of the U.S. International Trade Commission located at 6 World Trade Center.

Issued: March 30, 1978.

By order of the Commission.

KENNETH R. MASON,
Secretary.

[FR Doc. 78-8871 Filed 4-3-78; 8:45 am]

[7020-02]

[332-99]

CONVERSION OF SPECIFIC AND COMPOUND RATES OF DUTY TO AD VALOREM RATES

AGENCY: U.S. International Trade Commission.

ACTION: The Commission is instituting an investigation under the authority of section 332(g) of the Tariff Act of 1930, as amended (19 U.S.C. 1332(g)), to: (1) prepare an ad valorem equivalent for each item in the Tariff Schedules of the United States currently having a specific or compound rate of duty, and (2) determine the probable economic effect of adopting ad valorem rates in lieu of current specific and compound rates. this investigation was requested to assist the President in the current round of multilateral trade negotiations.

EFFECTIVE DATE: March 28, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Aaron Chesser, Office of Industries, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone: 202-523-0171.

SUPPLEMENTARY INFORMATION: In response to a request received March 16, 1978, from the Special Representative for Trade Negotiations, at the direction of the President, the U.S. International Trade Commission instituted the above-captioned investigation.

Specifically the Special Representative, acting pursuant to the authority of section 332(g) of the Tariff Act of 1930, as amended (19 U.S.C. 1332(g)), and Executive Order 11846 (3 CFR 971 (1971-1975 Comp.)), as amended, has requested that the Commission report to the President on the following:

1. For each TSUS item which carries a specific or compound rate of duty, an ad valorem equivalent (AVE) of the current Column 1 rate of duty, based on the value of imports of the article concerned in a recent period which the Commission considers to be representative. The base period of imports used for each item will be identified. For items under which no imports have occurred, an estimated ad valorem equivalent will be supplied, together with an indication of the basis of the estimate. For any TSUS items containing a large number of diverse products with widely differing values, the item may be divided into subcategories of products and an AVE reported for each, where the Commission considers it appropriate and desirable.

2. For each of the TSUS items for which an AVE is reported, the Commission's judgment as to whether the changes which would result in the duties collected on imports under the item, if the current Column 1 rates were converted to ad valorem rates at the level of the AVE, would be sufficient to have a significant economic effect upon either the amount or composition of imports over the next 3 years, or could have a significant detrimental effect on importers or consumers of the article concerned or on a domestic industry producing like or directly competitive products.

3. Any special circumstances, not covered in paragraph 2 above, applicable to particular items which would make conversion of rates for those items undesirable, for either economic or administrative reasons.

4. For each of the TSUS items for which an AVE of the current Column 1 item is reported, an ad valorem rate which could be substituted for the corresponding Column 2 rate. For the Column 2 rates reported, the Commission will supply the same type of advice and information requested in paragraphs 2 and 3 above concerning the AVE's for Column 1 rates.

List of proposed ad valorem equivalents of specific and compound rates.—The Commission will, during the course of the investigation, issue for public consideration and comment a proposed list of ad valorem equivalents for items within the TSUS having specific and compound rates of duty.

Public hearing.—A public hearing in connection with the investigation will be held in the Commission Hearing Room, 701 E Street NW., Washington, D.C. 20436, beginning at 9:30 a.m., e.s.t., on April 24, 1978. All interested persons will be given an opportunity to be present, produce evidence, and be heard at that hearing. Requests to appear at the public hearing should be addressed to the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, and should be received not later than noon of the fifth calendar day preceding the hearing at which an appearance is requested.

Written submissions.—In lieu of or in addition to appearances at the public hearings, interested persons may submit written statements. Any business information which a submitter desires the Commission to treat as confidential shall be submitted on separate sheets, each clearly marked at tht top "Confidential Business Data." Confidential submissions must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential bvusiness data, will be made available for inspection by interested persons. To be assured of consideration by the Commission, written statements should be submitted at the earliest practicable date, but no later than May 3, 1978. All submissions

should be addressed to the Secretary at the Commission's office in Washington, D.C.

Issued: March 29, 1978.

By order of the Commission.

KENNETH R. MASON,
Secretary.

[FR Doc. 78-8874 Filed 4-3-78; 8:45 am]

[7020-02]

WATCHES AND WATCH MOVEMENTS FROM INSULAR POSSESSIONS

Determination of Apparent U.S. Consumption of Watch Movements in 1977 and of Quotas for Duty-Free Entry of Watches and Watch Movements From Insular Possessions in 1978

In accordance with headnote 6(c) of schedule 7, part 2, subpart E, of the Tariff Schedules of the United States (TSUS), the U.S. International Trade Commission has determined that the apparent U.S. consumption of watch movements for the calendar year 1977 was 69,170,000 units. The number of watches and watch movements, the product of the Virgin Islands, Guam, and American Samoa, which may be entered free of duty during calendar year 1978 under headnote 6(b) of subpart E of the TSUS is as follows:

	Units
Virgin Islands	6,725,000
Guam	640,000
American Samoa	321,999

The above determination was derived as follows:

Item	*1,000 units*
U.S. production	30,804
Less inventory increase	541
Less exports of domestic merchandise	3,208
Apparent U.S. consumption of domestic units	27,055
U.S. imports	37,884
Less re-exports of foreign merchandise	644
Net imports	37,240
Shipments from Virgin Islands, Guam, and American Samoa	4,875
Apparent U.S. consumption	69,170

* * * * *

Issued: March 30, 1978.

By order of the Commission.

KENNETH R. MASON,
Secretary.

[FR Doc. 78-8875 Filed 4-3-78; 8:45 am]

[4410-01]

DEPARTMENT OF JUSTICE

Antitrust Division

UNITED STATES v. CULBRO CORP., HAVATAMPA CORP., HAVATAMPA HOLDING CO. AND HAV CORP.

Proposed Consent Judgment Agreement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (b) through (h), that a proposed consent judgment agreed to by the United States, Culbro Corp., Havatampa Corp. (formerly HAV Corp.), and Havatampa Holding Co. and a competitive impact statement have been filed with the United States District Court for the Southern District of New York in the case of *United States* v. *Culbro Corp.*, Civil Action No. 77 Civ. 3149 EW.

The complaint in this case alleged that Culbro's participation in the acquisition of the assets of Havatampa Corp. by HAV (now known as Havatampa Corp.) and Havatampa Holding Co. violated section 7 of the Clayton Act because competition in the manufacture and sale of cigars would be substantially lessened. Culbro's participation in this transaction included the acquisition of an option to purchase up to 25 percent of the stock of Havatampa Holding Co. and the right to name one director to the boards of HAV and Havatampa Holding Co., in return for which Culbro made a subordinated loan of $2,750,000 to Havatampa Holding Co.

The proposed judgment requires Havatampa to divest its cigar manufacturing business within 18 months of the entry of the decree. If the cigar manufacturing business is not divested, Culbro must sell all of its stock and debt interest in Havatampa. The proposed judgment also requires that if Culbro retains its interest in Havatampa, Havatampa must limit its yearly purchases of Culbro cigars for 20 years to 12.9 percent of its total dollar purchases of cigars during the previous year, or $2,790,327, whichever is greater. For five years following entry of the judgment Culbro is prohibited from acquiring additional stock in Havatampa Holding Co. or Havatampa Corp. and from acquiring any of their assets, except in the ordinary course of business.

Public comment is invited within the statutory 60 day comment period. All comments and responses thereto will be published in the FEDERAL REGISTER and filed with the Court. Comments should be directed to Gerald A. Connell, Chief, General Litigation Section, Antitrust Division, Department of Justice, Washington, D.C. 20530.

Dated: March 22, 1978.

CHARLES F. B. MCALEER,
Special Assistant for Judgment Negotiations, Office of Operations.

UNITED STATES DISTRICT COURT, FOR THE SOUTHERN DISTRICT OF NEW YORK

United States of America, Plaintiff, v. *Culbro Corp., Havatampa Corp., Havatampa Holding Co., and HAV Corp.*, Defendants.
Civil Action No. 77 Civ. 3149 (EW).
Filed: March 22, 1978.

STIPULATION

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. A Final Judgment in the form attached hereto may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, and without further notice to any party or other proceedings: *Provided*, That plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

2. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this stipulation, this stipulation shall be of no effect whatever and the making of this stipulation shall be without prejudice to plaintiff and defendants in this or any other proceeding.

Dated: March 22, 1978.

For Plaintiff: John H. Shenefield, *Assistant Attorney General;* William E. Swope, Charles F. B. McAleer, Gerald A. Connell, Alan L. Marx, Steven C. Douse, Henry J. Van Wageningen, *Attorneys, Department of Justice.*

For Defendants: Richard T. Colman, Esq., *Counsel for Havatampa Holding Co., HAV Corp., and Havatampa Corp.*, John J. Kirby, Jr., Esq., *Counsel for Culbro Corp.*

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

United States of America, Plaintiff, v. *Culbro Corp., Havatampa Corp., Havatampa Holding Co., and HAV Corp.*, Defendants.
Civil Action No. 77 Civ. 3149 (EW).
Filed: March 22, 1978.

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on June 28, 1977, and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment and without this Final Judgment constituting any evidence against or admission by any party with respect to any issue of fact or law herein,

It is hereby ordered, adjudged and decreed as follows:

I

This Court has jurisdiction of the subject matter of this action and the parties hereto. The complaint states a claim upon which relief may be granted against the defendants under section 7 of the Clayton Act, 15 U.S.C. 18.

II

As used in this Final Judgment:
(A) "Havatampa" means Havatampa Holding Co., Havatampa Corp., formerly known as HAV Corp., and their successors;
(B) "Culbro" means Culbro Corp.;
(C) "Cigar" means a roll of tobacco wrapped in tobacco weighing more than three pounds per thousand;
(D) "Culbro cigars" means those brands of cigars manufactured by or for Culbro;
(E) "Havatampa cigars" means those brands of cigars manufactured by or for Havatampa Corp.

III

The provisions of this Final Judgment applicable to defendants shall apply to each of their directors, officers, employees, agents, subsidiaries, affiliates, successors and assigns, and to all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

IV

Havatampa is ordered and directed to divest within eighteen months of the date of entry of this Final Judgment all of its interest in the cigar manufacturing business of Havatampa.
(A) Havatampa shall sell as a going business all of the assets that were devoted to the manufacture of cigars on or after July 30, 1977, to a buyer who intends to operate the divested assets as a going business: *Provided, however,* That Havatampa may sell less than all such assets with the consent of the plaintiff, which shall not be unreasonably withheld, if the buyer so specifies, after having been given the opportunity to purchase all of the assets involved.
(B) Havatampa shall sell or grant to the buyer a license to use all brand names and trademarks that have been utilized by Havatampa in its cigar manufacturing business on or after July 30, 1977.
(C) Havatampa shall guarantee to the buyer that it will continue to purchase cigars bearing the brand names and trademarks referred to in subsection (B) above from the buyer for a period of two years from the date of completion of the divestiture at a level equivalent to the total dollar amount of the purchases of Havatampa cigars during the fiscal year 1977 by the distribution houses owned by Havatampa, if such cigars are made available to it at prices no less favorable than those offered to the trade generally.
(D) Divestiture shall not be made to a buyer whose acquisition of the assets being sold would violate section 7 of the Clayton Act, 15 U.S.C. 18.

V

In the event that the cigar manufacturing business of Havatampa is divested pursuant to section IV and Culbro continues to hold a debt or equity interest in Havatampa, Havatampa shall be enjoined from manufacturing cigars until twenty years after the date of entry of this Final Judgment.

VI

(A) Havatampa is ordered and directed to compile a record of its efforts to dispose of its manufacturing business, including identification of any person or persons to whom the property is or has been offered, the terms and conditions of each offer to sell, the identification of any person or persons expressing interest in acquiring the business, and the terms and conditions of each offer to purchase.
(B) Havatampa shall promptly report the complete details of any proposed plan of divestiture to the plaintiff and shall simultaneously provide plaintiff with a copy of the record provided for in subsection (A).
(C) Following the receipt of any plan of divestiture, plaintiff shall have 30 days in which to object to the proposed divestiture by written notice to Havatampa, unless within 10 days plaintiff requests additional information regarding the proposed divestiture, in which case plaintiff shall have 30 days following the receipt of the information requested to object. If plaintiff does not object to the proposed divestiture, it may be consummated. If plaintiff does object, the proposed divestiture shall not be consummated until Havatampa obtains the Court's approval of the proposed plan of divestiture or until plaintiff withdraws its objection.
(D) If plaintiff objects to the proposed divestiture, the running of the time period set forth in section IV for the divestiture of the cigar manufacturing business of Havatampa shall be suspended from the date of the objection until the plaintiff withdraws its objection or the Court approves or rejects the proposed plan of divestiture.

VII

If at the end of eighteen months from the date of entry of this Final Judgment the divestiture required by Section IV has not been accomplished, Culbro shall sell its debt and equity interest in Havatampa within 120 days.

VIII

The Hold Separate Order entered in this case on July 28, 1977, shall remain in effect until divestiture has been completed or, if divestiture is not completed within the eighteen months specified in section IV, until Culbro sells its interest in Havatampa as required in section VII: *Provided, however,* That Culbro may assist Havatampa in effecting the divestiture by furnishing advice with respect to Havatampa's tobacco inventories, machinery, equipment, and manufacturing technologies.

IX

(A) For a period of 20 years from the date of entry of this Final Judgment Havatampa shall not purchase Culbro cigars except as provided below:
(1) In any calendar year Havatampa may purchase Culbro cigars having a dollar value not to exceed 12.9 percent of the dollar amount of Havatampa's total purchases of cigars from all sources in the preceding calendar year, or $2,790,327, whichever is greater.
(2) Culbro shall not sell to Havatampa, or to retailers through the efforts of Havatampa, Culbro cigars in excess of the dollar amount that Havatampa is permitted to purchase under the terms of subsection (1).
(3) Culbro cigars sold through the efforts of Havatampa shall be counted against the annual maximum dollar amount of permissible purchases of Culbro cigars by Havatampa as specified in subsection (1) to the same extent as if the sales had been made to Havatampa.
(4) For the purposes of this section, acquisitions of cigars by Havatampa from any source, whether for cash or in exchange for cigars or other products, shall be deemed to be purchases, and the cigars obtained by exchange shall be deemed to be purchased for a dollar amount equal to the dollar cost to Havatampa of the cigars or other products given up by Havatampa in such an exchange.
(B) The provisions of this Section shall no longer apply if Culbro sells its debt and equity interest in Havatampa.

X

(A) Havatampa is ordered and directed within thirty days of the date of entry of this Final Judgment, and thereafter between February 1 and February 28 of each year for a period of twenty years from the date of entry of this Final Judgment, to compile a table showing the total dollar amount of Havatampa's purchases of cigars, identified by manufacturer, during the preceding year. The table shall also show the total dollar amount of Culbro cigars sold through Havatampa's efforts, other than Culbro cigars purchased by Havatampa. A copy of the table shall be furnished to plaintiff by March 15 of each year.
(B) The provisions of this section shall no longer apply if Culbro sells its debt and equity interest in Havatampa.

XI

For a period of five years from the date of entry of this Final Judgment Havatampa shall not transfer to Culbro, and Culbro shall not acquire, any stock interest in Havatampa beyond the twenty-five percent stock interest in Havatampa Holding Company provided for in the option previously granted to Culbro or any assets of Havatampa other than assets acquired in the ordinary course of business.

XII

(A) For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant at its principal office, be permitted:
(1) Access during office hours of the defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the defendant relating to any matters contained in this Final Judgment;
(2) Subject to the reasonable convenience of the defendant and without restraint or interference from it, to interview the officers, directors, employees, and agents of the defendant, who may have counsel present, regarding any such matters.
(B) A defendant, upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, shall submit such reports in writing with respect to any of the matters contained in this Final Judgment as may from time to time be requested.
(C) No information obtained by the means provided in this Section shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the executive branch of the United States Government, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise re-

quired by law. If at the time information or documents are furnished by a defendant to plaintiff, the defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and said defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then 10 days notice shall be given by plaintiff to such defendant prior to divulging such material in any legal proceeding (other than a Grand Jury proceeding) to which that defendant is not a party.

XIII

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction, implementation or modification of any of the provisions thereof, for the enforcement of compliance therewith, and the punishment of violations thereof.

XIV

Entry of this Final Judgment is in the public interest.

United States District Judge.

UNITED STATES DISTRICT ORDER FOR THE SOUTHERN DISTRICT OF NEW YORK

United States of America, Plaintiff, v. *Culbro Corp., Havatampa Corp., HAVATAMPA HOLDING CO., and HAV Corp.*, Defendants.

Civil Action No. 77 Civ. 3149 (EW).

Filed: March 22, 1978.

COMPETITIVE IMPACT STATEMENT

This competitive impact statement, relating to the proposed consent judgment submitted for entry in this civil antitrust proceeding, is filed by the United States, pursuant to section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b).

1. *The nature and purpose of the proceeding.* The complaint in this action was filed on June 28, 1977. The original defendants were Culbro Corp., which was at the time the second largest manufacturer and third largest wholesale distributor of cigars in the United States; Edgar M. Cullman, President and Chairman of the Board of Culbro; Havatampa Corp. ("Old Havatampa"), at the time the sixth largest manufacturer and the largest wholesale distributor of cigars in the United States; and Havatampa Holding Co. ("Holding Company") and its wholly-owned subsidiary, HAV Corp., corporations formed by Oppenheimer & Co., an investment partnership, to acquire the assets of Old Havatampa.

As the transaction was originally structured, Culbro was to acquire an option to buy up to 25 percent of the stock of Holding Company and a $2,750,000 subordinated debenture. Culbro also was to be given the right to name one director to Holding Company's seven-person board of directors. Culbro's original nominee was Edgar M. Cullman. Following the acquisition by HAV of the assets of Old Havatampa, Culbro was to furnish advice and assistance in operating the Havatampa business. (The term "Havatampa" is used herein to include both Holding Company and HAV and the business acquired by them from Old Havatampa.)

The complaint alleged that Culbro's proposed acquisition of the option and subordinated debenture would violate Section 7 of the Clayton Act because competition among cigar manufacturers would be lessened, cigar manufacturers might be foreclosed from selling through the distribution houses owned by Havatampa, and the acquisiton of wholesale distributors of cigars by other cigar manufacturers would be encouraged. The complaint also alleged that Mr. Cullman's participation as a member of the board of directors of Holding Company would violate Section 8 of the Clayton Act, which prohibits interlocking directorates. This part of the complaint was dismissed without prejudice when Culbro submitted an affidavit stating that neither Mr. Cullman nor any other director of Culbro would be named to the boards of directors of Holding Company or HAV.

On June 30, 1977, the Government obtained a temporary restraining order prohibiting consummation of the transaction. *See* 1977-1 Trade Cases ¶ 61,514 (S.D.N.Y.). An evidentiary hearing was held between July 6 and July 13, 1977, on the government's motion for a preliminary injunction. On July 28, 1977, the court denied the Government's motion and instead entered a hold separate order which permitted the acquisition to go forward under conditions strictly limiting Culbro's participation in the Havatampa business pending a trial on the merits. *See* 436 F. Supp. 746 (S.D.N.Y.).

The transaction, as modified by the terms of the hold separate order, was consummated on July 30, 1977. Old Havatampa sold its assets to HAV, which changed its name to Havatampa Corp. ("New Havatampa"). Old Havatampa then became an investment company known as Eli Securities, Inc., which has no further involvement with the business of New Havatampa. Eli Securities was dismissed from the case without prejudice and with the consent of the Government.

Culbro purchased the $2,750,000 subordinated debenture and obtained an option to purchase 25% of the stock of Holding Company. Culbro has not yet exercised its option. Culbro has the right under a collateral agreement to name one director to the Holding Company and New Havatampa boards of directors, but it has been prohibited from exercising this right by the hold separate order.

The nature of the alleged violation. The line of commerce involved in this transaction is the manufacture and sale of cigars. According to common industry usage, a cigar is any roll of tobacco wrapped in tobacco leaf or reconstituted tobacco weighing more than three pounds per thousand. The geographic area within which manufacturers sell and wholesalers buy cigars is the United States as a whole.

Cigar manufacturing is a concentrated industry. The top four manufacturers share approximately 72 percent of total cigar sales, and the top eight share approximately 88 percent. Cigar manufacturing is an industry characterized by declining sales and profitability, excess productive capacity, and consolidation of production facilities. Under these circumstances the combined market shares of Culbro and Havatampa as cigar manufacturers—approximately 16-18 percent and 3.5 percent respectively in 1976—would result in a substantial increase in concentration in a market that is already highly concentrated, with a tendency toward increasing concentration in the future, and with little prospect of new entry.

Havatampa, which distributes a broad line of tobacco and non-tobacco products, is the largest wholesale distributor of cigars in the country, with considerable market power in Florida and several other Southeastern states. It is the first or second largest purchaser of cigars from virtually every major cigar manufacturer. In many cities where Havatampa has a distribution house it is the essential wholesaler for most cigar manufacturers. There are significant barriers to entry into cigar wholesaling in the Havatampa distribution areas.

Large wholesale distributors of cigars have the power significantly to affect the sales of individual cigar manufacturers by the degree of distribution, promotion, and service they provide for various brands of cigars. For example, favoritism may be show for a particular manufacturer's cigars through preference in rack position, number of facings or boxes displayed, commissions paid to salesmen, appearance on the distributor's "push list", passing on of manufacturers' promotions, acceptance of new product introduction, and recommendations to retailers. The power of wholesalers to affect sales is demonstrated by the fact that Culbro and Havatampa cigars account for a much higher percentage of the sales of their own distributions houses than is represented by their national market shares.

3. *The proposal for a consent judgment.* Section IV of the proposed consent decree orders divestiture of the cigar manufacturing business of Havatampa within 18 months of the entry of the decree. Unless the Government consents to a sale of less, all of the assets devoted to cigar manufacturing must be sold as a going business, and to a buyer who intends to operate them as a going business, and whose acquisition of them would not violate section 7 of the Clayton Act. The buyer must be sold or granted a license to use the brand names and trademarks that have been used by Havatampa in its cigar manufacturing business. If the buyer so specifies, Havatampa must guarantee to purchase cigars from the buyer for two years at a level equivalent to the purchases of Havatampa cigars by the Havatampa distributions houses during 1977.

The Government has the right under section VI of the decree to object to a proposed purchaser or plan of divestiture, in which case the proposed divestiture cannot be completed without the court's approval. Section VIII provides that the hold separate order is to remain in effect until divestiture is completed or Culbro sells its interest in Havatampa, except that Culbro is permitted to assist in certain aspects of the divestiture.

If divestiture is accomplished, section V prohibits Havatampa from manufacturing cigars for 20 years from the date of the judgment. If at the end of 18 months divestiture has not been accomplished, section VII of the decree requires Culbro to sell it debt and equity in Havatampa within 120 days.

If Culbro is forced to sell all its interest in Havatampa, the Government will obtain complete relief on both the horizontal and vertical aspects of the case. If divestiture of the cigar manufacturing business of Havatampa occurs, the divestiture will eliminate only the horizontal aspects of the acquisition, as Culbro will retain its interest in Havatampa. In that event, other provisions are designed to deal with the vertical problems.

Section IX of the decree prohibits Havatampa for a 20 year period from purchasing Culbro cigars having a value in excess of 12.9 percent of the dollar amount of Havatampa's total purchases of cigars from all sources in the preceding calendar year, or $2,790,327, whichever is greater. The purpose of this restriction is to prevent the defendants from exploiting Havatampa's market power as a wholesaler in order to increase the sales of Culbro cigars through Havatampa at the expense of other manufacturers' cigars. It is also intended to remove the incentive for other cigar manufacturers to acquire wholesale distributors of cigars in reaction to this acquisition.

The 12.9 percent figure equals the average ratio of Culbro cigars to all cigars purchased by Havatampa during the years 1975 through 1977, and thus represents the level of sales to Havatampa that Culbro was able to achieve in competition with other manufacturers. Under the terms of the decree this level of sales may be maintained but cannot be increased.

The dollar amount of purchases by Havatampa from Culbro and from all manufacturers during the years 1975 through 1977 is shown in the table in Appendix A. The Culbro purchases represent 14.1 percent of the total in 1975, 12.5 percent in 1976, and 12.1 percent in 1977. The percentage limitation agreed to by the government does permit Havatampa to increase its purchases of Culbro cigars slightly over those of the last two years if Havatampa's total purchases remain the same; 12.9 percent of Havatampa's 1977 purchases equals $3,712,790, an increase of approximately $225,000 over Culbro's actual sales to Havatampa during 1977 of $3,487,909.

The Government considered the three year average acceptable when balanced against the long duration of the restriction and the competitive benefits which will result from increased competition among cigar manufacturers when the Havatampa wholesale houses no longer have an incentive to favor Havatampa cigars. The purchases of Havatampa cigars by Havatampa wholesale houses exceeded $6 million per year during each of the past three years. See Appendix A. The government also took into account the fact that Culbro's sales to Havatampa during this period represented a smaller percentage of Havatampa purchases than during prior years.

As noted above, the judgment permits Havatampa to purchase $2,790,327 worth of cigars from Culbro even if this exceeds 12.9 percent of its total purchases. This figure is equivalent to 80 percent of Havatampa's purchases of Culbro cigars in 1977. This provision is intended to mitigate the effects of the percentage limitation in the event of a precipitous decline in Havatampa's total cigar purchases. If, for example, another major cigar manufacturer stopped selling to Havatampa, the consequent sharp decline in Havatampa's total cigar purchases would produce an equally sharp decline in the amount of Culbro cigars Havatampa could purchase pursuant to the decree, a penalty that would go beyond the rationale of the restraint. The dollar figure provides a lower limit for the sales restriction, but it is far enough below the present percentage limit that it is not expected to become the operative maximum purchase figure in the ordinary course of market evolution for the foreseeable future.

Section X contains a reporting provision requiring Havatampa to compile annually and furnish to the Government a table showing the total dollar amount of Havatampa's cigar purchases, by manufacturer, during the preceding year. This requirement and the sales limitation of section IX apply only as long as Culbro continues to hold a debt or equity interest in Havatampa.

Section XI prohibits the acquisition by Culbro for a five year period of any additional stock in Havatampa or any assets of Havatampa other than those acquired in the ordinary course of business. This provision insures that for at least five years the interests of Havatampa will not be identical with those of Culbro. The Government considers this to be additional protection against the misuse of Havatampa's purchasing power to disadvantage competing manufacturers.

4. *Remedies available to private parties.* Entry of the proposed Final Judgment will have no effect on the rights of persons who may have been damaged by the alleged violation. Private plaintiffs may sue for money damages or any other legal or equitable remedy. However, this judgment may not be used as *prima facie* evidence in private litigation pursuant to section 5(a) of the Clayton Act, 15 U.S.C. 16(a).

5. *Procedures available for modification.* During the time period provided in the Antitrust Procedures and Penalties Act (a minimum of 60 days following the filing of the proposed consent judgment and its publication in the FEDERAL REGISTER), interested persons may file comments with Gerald A. Connell, Chief, General Litigation Section, Antitrust Division, Department of Justice, Washington, D.C. 20530, urging that the decree not be entered in the form proposed. These comments, and the Government's responses to them, will be filed with the court and published in the FEDERAL REGISTER. All comments will be given appropriate consideration by the Government, which remains free to withdraw its consent to the proposed judgment at any time prior to its entry. In addition, the proposed judgment provides for retention of jurisdiction over this action by the court, which will permit the parties to apply to the court for such orders as may be necessary or appropriate for modification of the judgment.

7. *Alternatives actually considered.* The prayer for relief in this case asks that a permanent injunction be issued preventing and restraining the defendants from "Consummating any of the component transactions of this acquisition, and specifically preventing and restraining Culbro from acquiring any equity interest in or position of control, influence, or management over Holding Company, HAV, or Havatampa". Relief substantially in this form, separating Culbro completely from Havatampa, is an alternative under the proposed judgment.

On September 23, 1977, the defendants proposed that this case be settled by Havatampa divesting its cigar manufacturing business within two years and by Culbro limiting the sale of its cigars to Havatampa for the next three years to 4.8 million dollars annually. This proposal was unacceptable to the Government.

On November 1, 1977, the defendants proposed that Havatampa divest its cigar manufacturing business within two years in a manner and to a purchaser acceptable to the government and that Culbro permanently limit the sale of its cigars to Havatampa to 4.8 million dollars annually, subject only to increases for inflation and national sales growth. This proposal was also unacceptable to the government; however, it did lead to further negotiations which resulted in the proposed judgment filed with this competitive impact statement.

Although most provisions of the proposed judgment were revised and refined in the course of the negotiations, no relief substantially different in kind was considered by the government. The Government did initially propose a clause prohibiting discrimination by Havatampa in its distribution of non-Culbro cigars, but the proposal was withdrawn after further consideration of the difficulties of drafting and enforcing such a provision. It was also deemed unnecessary in view of the other protections in the decree.

7. *Determinative documents.* The only materials that the United States considered determinative in formulating this proposed judgment were portions of tables showing annual purchases of cigars by Havatampa from cigar manufacturers. The relevant information from these tables has been filed as an attachment to this competitive impact statement, as has the option agreement referred to in Section XI of the proposed decree.

Respectfully submitted,

ALAN L. MARX,
STEVEN C. DOUSE,
HENRY J. VAN WAGENINGEN,
Attorneys, Department of Justice.

APPENDIX A

CIGAR PURCHASES BY HAVATAMPA CORP.*

	1977	1976	1975
Havatampa Cigar Corp	$6,483,515	$6,438,064.12	$7,144,467.59
General Cigar Co. (Culbro)	3,487,909	3,734,721.19	4,221,433.14
Total (all manufacturers)	28,781,318	29,871,667.05	30,006,044.73

*Information contained in Response to Interrogatory No. 5, Answers of Defendant Havatampa Corp. to plaintiff's first set of interrogatories, and supplemental response.

APPENDIX B

STOCK OPTION AGREEMENT

This stock option agreement dated July 29, 1977, between Havatampa Holding Co. (hereinafter referred to as the "Company"), a Delaware corporation, and Culbro Corp. (hereinafter referred to as "Culbro"), a New York corporation.

Whereas, Culbro has agreed to make a subordinated loan to the Company and the Company has agreed to enter into this

Agreement and to grant the option herein contained;

Now, therefore, in consideration of the foregoing and of the mutual agreements contained herein, the parties agree as follows:

Section 1. *Grant of stock option.* The Company hereby grants to Culbro the right and option ("the Option") to purchase from the Company, for a purchase price of $330,000, a number of shares of the Company's common stock which shall equal 25 percent of the shares of such common stock outstanding just after the time of such exercise, giving effect to the shares issued upon the exercise of the option. For the purposes hereof, any shares of the Company's common stock which are then subject to issuance by reason of option, conversion rights or otherwise shall be deemed outstanding. The option may not be exercised in part.

Section 2. *Term of option.* The option shall terminate on July 31, 1987.

Section 3. *Exercise of stock option.* At least five (5) days prior to the date upon which Culbro desires to exercise this option, Culbro shall deliver to the Company written notice of such exercise. Such notice shall specify the date and time for the purchase of the shares of common stock. The date specified in any such notice shall be a business day, and the time specified shall be during the regular business hours of the Company.

Section 4. *Payment for and delivery of common stock.* Culbro shall, at the date and time specified in the notice referred to in Section 3, deliver its certified check for $330,000 drawn to the order of the Company, in payment for the shares of common stock being purchased: *Provided however,* That, Culbro, instead of delivering such certified check, may deliver $330,000 in principal amount of the Company's 10% subordinated debentures due 1987 in payment for the shares of common stock being purchased. If Culbro elects to deliver such debentures in payment, the Company agrees to issue to Culbro a replacement debenture of the principal amount equal to the principal amount of the debenture being surrendered, less $330,000. Such delivery of certified check or debenture shall be made to the Company at the offices of Oppenheimer & Co., One New York Plaza, New York, N.Y. Culbro agrees that with respect to any shares of common stock acquired by it upon exercise of the option it will deliver to the Company an investment letter substantially in the form of Exhibit A annexed hereto. Contemporaneously with the exercise of the option, payment for the common stock to be acquired thereunder, and delivery of the investment letter with respect to such common stock, the Company shall deliver to Culbro certificates representing the number of shares of common stock of the Company being purchased, registered in the name of Culbro. The certificate for such shares shall have a legend in substantially the following form placed on the face thereof:

"The shares evidenced by this Certificate have been acquired for investment and have not been registered under the Securities Act of 1933 ("the Act"). The shares may not be sold or transferred except in a transaction registered under the Act or in a transaction which, in the opinion of the counsel, in form and substance satisfactory to the Company, is exempt from registration under the Act."

Section 5. *Registration of shares.* If at any time, or from time to time, the Company, at its sole election, proposes to register any shares of its common stock under the Securities Act of 1933 (the "Securities Act"), in connection with a sale by the Company of common stock for cash, it will give to Culbro reasonable notice thereof and the opportunity to include all or any portion of the shares of common stock acquired by Culbro pursuant to the exercise of the option (and any securities issued with respect thereto or in exchange therefor if like securities are then being registered by the Company in such registration), all at the cost of the Company (including, but in no way limited to, all registration and filing fees, printing expenses, fees and disbursements of counsel for the Company, but not the fees and disbursements of counsel acting for Culbro); *Provided, however,* That Culbro shall not request the Company to register less than twenty five percent (25%) of the shares held by Culbro. The Company retains the right in its sole discretion to withdraw such registration at any time prior to its becoming effective. If the offering is being underwritten, then Culbro agrees that (i) if it is not participating in such underwriting, it will enter into an agreement with the Company and the underwriter not to sell or dispose of such shares until such time after the effective date of the registration statement as the underwriter may reasonably request, or (ii) if Culbro is participating in such underwriting, it will enter into an agreement with the Company and the underwriter that such shares will or may be offered for sale or other disposition at the same time after the effective date of the registration statement as the other shares are being offered in such underwriting.

Section 6. *Blue Sky qualifications.* If the Company effects the registration of its common stock, the Company shall use all reasonable efforts at its cost to qualify the share of common stock under the Securities and Blue Sky laws in such jurisdictions in which the Company is offering such common stock for public sale.

Section 7. *Indemnifications.* For each registration by the Company pursuant to section 5 hereof:

A. The Company agrees to idemnify and hold harmless Culbro, its officers and directors and each person, if any, who controls Culbro within the meaning of the Securities Act of 1933 and the rules and regulations thereunder against any losses, claims, damages or liabilities, joint or several, to which Culbro, any officer or director thereof or such controlling person may become subject, under the Securities Act, the Securities Exchange Act of 1934 and the rules and regulations promulgated thereunder, or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon (i) any untrue statement or alleged untrue statement of a material fact contained in such registration statement, or (ii) the omission or alleged omission to state in such registration statement a material fact required to be stated therein or necessary to make the statements therein not misleading; and will reimburse Culbro and each officer and director of Culbro and each such controlling person for any legal or other expenses reasonably incurred in connection with investigating or defending any such loss, claim, damage, liability or action; *provided, however,* That the Company will not be liable in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon any untrue statement or alleged untrue statement or omission or alleged omission made in reliance upon and in conformity with written information furnished to the Company by or on behalf of Culbro for use with reference to Culbro in the preparation of such registration statement.

B. Culbro will indemnify and hold harmless the Company, its directors, and officers and each person if any, who controls the Company within the meaning of the Securities Act of 1933, against any losses, claims, damages or liabilities to which the Company or any such director or officer or controlling person may become subject under the Securities Act, the Securities Exchange Act of 1934 and the rules and regulations promulgated thereunder, or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or based upon (i) any untrue statement or alleged untrue statement of a material fact contained in such registration statement, or (ii) the omission to state in such registration statement a material fact required to be stated therein or necessary to make the statements therein not misleading; in each case to the extent that such untrue statement or alleged untrue statement or omission or alleged omission was made in reliance upon and in conformity with written information furnished to the Company by or on behalf of Culbro for use with reference to Culbro in the preparation of such registration statement, and will reimburse each such director or officer or controlling person for any legal or other expenses reasonable incurred in connection with investigating or defending any such loss, claim, damage, liability or action.

C. Upon the receipt by an indemnified party under this Section of notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against any indemnifying party under this Section 7, notify in writing the indemnifying party of the commencement thereof. In case any such action is brought against any indemnified party, and it notifies an indemnifying party of the commencement thereof, the indemnifying party will be entitled to participate therein, and to the extent that it may wish, jointly with any other indemnifying party, similarly notified, to assume the defense thereof, with counsel who shall be to the reasonable satisfaction of such indemnified party, and after notice from the indemnifying party to such indemnified party of its election so to assume the defense thereof, the indemnifying party will not be liable to such indemnified party under this Section 7 for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation. Any such indemnifying party shall not be liable to any such indemnified party on account of any settlement of any claim or action effected without the consent of such indemnifying party.

Section 8. *Covenants of Company.* The Company covenants with Culbro as follows:

A. *Fractional Shares.* In the event that any calculation of the number of shares to be issued hereunder results in a fraction, then Culbro shall be entitled to fractional shares in the exact amount of such fraction.

B. *Maintenance of Shares.* The Company shall at all times maintain authorized but unissued shares of Common Stock in sufficient amounts to issue and deliver to Culbro the number of shares of Common Stock to which Culbro would be entitled upon the full exercise by Culbro of the Option.

Section 9. *Applicable Law.* This Agreement shall be construed in accordance with and governed by the laws of the State of New York.

Section 10. *Survival of Covenants; Successors and Assigns.* Except as otherwise provided herein, all covenants agreements, representations and warranties made by the parties to this Agreement shall inure to the benefit of and be binding upon any successors and assigns of the parties.

Section 11. *Modification; Waiver.* This Agreement contains the entire understanding of the parties with respect to the subject matter hereof. Neither this Agreement nor any provision hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought.

Section 12. *Communications and Notices.* All communications and notices provided for in this Agreement shall be in writing and shall be deemed sufficiently given on the second (2nd) business day after deposited in the mail, registered or certified, postage prepaid, and addressed to the party to whom given. Such communications and notices shall be addressed as follows:

If to the Company:

Havatampa Holding Co., c/o Oppenheimer & Co., One New York Plaza, New York, N.Y. 10004. Attn: Howard Phillips.

with a copy to:

Barrett Smith Schapiro Simon & Armstrong, 26 Broadway, New York, N.Y. 10004. Attn: David D. Brown, III.

with another copy to:

Oppenheimer & Co., One New York Plaza, New York, N.Y 10004, Attn: Howard Phillips.

If to Culbro:

Culbro Corp., 605 Third Avenue, New York, N.Y., Attn: Edgar Cullman.

with a copy to:

or to such other post office address as such parties shall from time to time designate by notice in writing.

Section 13. *Waivers and Amendments.* No course of dealing between the parties, nor any omission or delay by the parties in exercising any right or power under this Agreement will impair such right or power or be construed to be a waiver of any default or an acquiescence therein.

Section 14. *Counterparts.* This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

In witness whereof the parties have executed this Agreement as of the date first written above:

HAVATAMPA HOLDING CO.

By _____

CULBRO CORP.

By _____

[FR Doc. 78-8734 Filed 4-3-78; 8:45 am]

[4410-01]

UNITED STATES V. IDEAL BAKING CO. OF PARIS, INC., ET AL.

Written Comments Upon Consent Judgments and Department of Justice Responses Thereto

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, the following written comment on the proposed judgments filed with the U.S. District Court in the Middle District of Louisiana, Civil Action No. 75-73, *U.S.* v. *Ideal Baking Co. of Paris, Inc., et al.*, Civil Action No. 75-74, *U.S.* v. *Huval Baking Co., Inc., et al.*, Civil Action No. 75-75, *U.S.* v. *Colonial Baking Co. of El Dorado, et al.*, Civil Action No. 75-76, *U.S.* v. *Cotton's, Inc., et al.* was received by the Department of Justice and is published herewith, together with Justice's response to the comment.

Dated: March 20, 1978.

CHARLES F. B. MCALEER,
Special Assistant for Judgment Negotiations, Office of Operations.

UNITED STATES DISTRICT COURT, MIDDLE DISTRICT OF LOUISIANA

United States of America, Plaintiff, v. *Ideal Baking Company of Paris, Inc., et al.*, Defendants (Civil No. 75-73); *United States of America*, Plaintiff, v. *Huval Baking Company, Inc., et al.*, Defendants (Civil No. 75-74); *United States of America*, Plaintiff, v. *Colonial Baking Co. of El Dorado, et al.*, Defendants (Civil No. 75-75); *United States of America*, Plaintiff, v. *Cotton's, Inc., et al.*, Defendants (Civil No. 75-76).

RESPONSE OF THE UNITED STATES TO COMMENTS WITH RESPECT TO STIPULATIONS AND PROPOSED FINAL JUDGMENTS

Pursuant to 15 U.S.C. 16(d) the United States files the following response to the Objection to Proposed Consent Decree and Final Judgment filed by Charles Herring, Jr., on behalf of plaintiffs in the following private antitrust suits consolidated in *In Re South Central States Bakery Products Antitrust Litigation*, Master File No. MDL 282:

James Lloyd Johnson, Jr., et al. v. *Ideal Baking Company of Paris, Inc., et al.*, Civil Action No. M-76-10-CA, Eastern District of Louisiana;

Miller's Food Corporation, et al. v. *Cotton's Inc., et al.*, Civil Action No. 76-239, Middle District of Louisiana;

Daniel D. Riddle, d.b.a. Riddle's Restaurant, et al. v. *Huval Baking Company, Inc.*, Civil Action No. 76-1125, Western District of Louisiana;

Betty Hinten, d.b.a. Betty's Grocery, et al. v. *Colonial Baking Co. of El Dorado, et al.*, Civil Action No. 76-1124, Western District of Louisiana.

The United States has reviewed the objections of counsel for the private plaintiffs and finds these objections not sufficient to require any alteration in the proposed consent decrees. These objections have been reviewed in light of a Motion for Preservation of Documents filed in the above captioned cases. It is submitted that the action which counsel for the private plaintiffs desires—through modification of the proposed consent decrees—is adequately subsumed in plaintiff's motions in the private cases.

Plaintiffs' singular concern is the preservation of the documents produced by the various defendants pursuant to subpoenas *duces tecum* issued by grand juries in the Middle District of Louisiana, the Southern District of Mississippi, and the Eastern District of Texas. Those documents currently are in the custody of attorneys for the Antitrust Division in Dallas, Tex., and Atlanta, Ga. Certain of the documents were used as exhibits in the trial of *United States* v. *Cotton's, Inc., et al.*, Criminal No. 75-43, Middle District of Louisiana.

Counsel for the private plaintiffs alleges, and the government concedes, that it is the government's intention to return all such documents to the producing parties upon entry of Final Judgments in the above captioned cases. Plaintiffs' counsel further contends that this would impair the ability of the government to subsequently determine compliance with the decrees—through counsel makes no compelling argument as to why this is true. Counsel's principal concern is insuring the availability of these documents to the private treble damage plaintiffs. The government does not in any way wish to interfere with the ability of the plaintiffs to obtain documents necessary for the continued prosecution of their cause of action. Nevertheless, the government would object to any modification of the proposed Final Judgments in order to accommodate plaintiffs' counsel, especially since alternative methods for accommodating that particular end are not only available but are being pursued by counsel in the private actions.

Entry of that portion of the Order sought in plaintiffs' Motion for Preservation of Documents which would require defendants to preserve all relevant documents would adequately preserve the grand jury documents upon their return to the producing parties.

Inasmuch as plaintiffs' counsel has and is pursuing an adequate alternative means of insuring the preservation and availability of the documents produced to the government pursuant to subpoenas *duces tecum*, the United States contends that there is no valid reason for altering the proposed consent decrees and therefore recommends that the Court find such decrees are in the public interest and enter the proposed orders without further modification.

Dated: February 27, 1978.

Respectfully submitted,

J. ALBERT KROEMER,
Attorney, Department of Justice, Antitrust Division, 1100 Commerce Street, Room 8C6, Dallas, Tex. 75242.

IN THE UNITED STATES DISTRICT COURT, MIDDLE DISTRICT OF LOUISIANA

This document relates to:
United States of America v. *Ideal Baking Company of Paris, Inc., et al.*

Civil No. 75-73, Middle District of Louisiana.

United States of America v. *Huval Baking Company, Inc., et al.*

Civil No. 75-74, Middle District of Louisiana.

United States of America v. *Colonial Baking Co. of El Dorado, et al.*

Civil No. 75-75, Middle District of Louisiana.

United States of America v. *Cotton's, Inc., et al.*

Civil No. 75-76, Middle District of Louisiana.

OBJECTION TO THE PROPOSED CONSENT DECREE AND FINAL JUDGMENT

I

Pursuant to 15 U.S.C. 16(d) and (f)(4), this objection to the proposed consent decree and final judgment is submitted for consideration by the Attorneys for the United States and the Honorable United States District Court for the Middle District of Louisiana. This objection is submitted on behalf of Plaintiffs in the following private antitrust suits consolidated in *In Re South Central States Bakery Products Antitrust Litigation*, Master File No. MDL 282:

James Lloyd Johnson, Jr., et al. v. *Ideal Baking Company of Paris, Inc., et al.*, Civil Action No. M-76-10-CA, Eastern District of Louisiana;

Miller's Food Corporation, et al. v. *Cotton's Inc., et al.*, Civil Action No. 76-239, Middle District of Louisiana;

Daniel D. Riddle, d.b.a. *Riddle's Restaurant, et al.*, v. *Huval Baking Company, Inc.*, Civil Action No. 76-1125, Western District of Louisiana;

Betty Hinten, d.b.a. *Betty's Grocery, et al.* v. *Colonial Baking Co. of El Dorado, et al.*, Civil Action No. 76-1124, Western District of Louisiana.

II

It is submitted that the Government's representatives have failed to provide adequately in the proposed consent decree for the protection of the public's interest and those of private litigants by making no provision for the safeguarding of important evidence and public records.

III

During the investigation by the Government and federal grand juries in connection with these civil cases and the related criminal cases, the Defendants produced a substantial quantity of documents and materials that are now in the custody of Government attorneys and agents, including J. Albert Kroemer, Attorney, Antitrust Division, United States Department of Justice. Additionally, one of the related criminal cases proceeded to trial before this Honorable Court, *United States of America* v. *Cotton's Inc., et al.*, Criminal No. 75-43 (Middle District of Louisiana). In that trial the Government offered into evidence a large number of exhibits, thereby making such materials part of the public record in the case.

IV

Mr. Kroemer has stated that he anticipates retaining the documents pending final resolution of these civil cases and then expects to dispose of the documents, delivering many of them to the Defendants in these cases. Additionally, he has stated that he does not intend to return to the custody of the Clerk of the United States District Court for the Middle District of Louisiana the actual trial exhibits or evidence that he had obtained custody of from the trial of *United States of America* v. *Cotton's, Inc., et al.*, Criminal No. 75-43.

V

Section 16(b) of Title 15, United States Code directs the Government to file a competitive impact statement for any proposed consent judgment. The requirements for such a statement include:

(3) An explanation of the proposal for a consent judgment, including an explanation of any unusual circumstances giving rise to such proposal or any provision contained therein, relief to be obtained thereby, and the anticipated effects on competition of such relief.

(4) The remedies available to potential private plaintiffs damaged by the alleged violation in the event that such proposal for the consent judgment is entered in such proceeding * * *.

VI

The Court retains the authority and responsibility under 15 U.S.C. 16(e) to determine if the proposed consent judgment is in the public's interest. That section provides:

PUBLIC INTEREST DETERMINATION

(e) Before entering any consent judgment proposed by the United States under this section, the court shall determine that the entry of such judgment is in the public interest. For the purpose of such determination, the court may consider—

(1) the competitive impact of such judgment, including termination of alleged violation, *provisions for enforcement* and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and *any other considerations bearing upon the adequacy of such judgment;*

(2) the *impact of entry of such judgment upon the public generally and individuals alleging specific injury* from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial. (Emphasis added).

VII

In the proposed Final Judgment, Section X, the Government retains the right to examine the records and documents in the possession of the Defendants and undertakes a duty to monitor compliance by the Defendants with the consent decree. It is submitted that if the Government returns documents and evidence to the Defendants, the Government will be unable to compare effectively Defendants' current actions with their past illegal actions and from that determine whether the Defendants are indeed complying with this judgment. It is submitted that it is in the public's interest that the Government or the Court retain possession of these documents and evidence to protect the public not only from possible illegal acts allowed by ineffective monitoring by the Government but also from costly, wasteful and unnecessary duplication of effort in reconstructing these documents at a future time.

VIII

The Government is also required to determine the impact of the proposed consent judgment on the general public and private damages by the alleged violations. In its Competitive Impact Statement, the Government deals with this requirement in this manner:

VI. REMEDIES AVAILABLE TO PRIVATE LITIGANTS

Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in Federal court to recover three times the damages such person has suffered, as well as costs and reasonable attorney fees. Entry of the proposed consent judgment in this proceeding will neither impair nor assist the bringing of any such private antitrust actions, nor will it have any effect on pending actions. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. § 16(a)), this consent judgment has no *prima facie* effect in any lawsuits which might be brought against these defendants.

IX

Here again the Government has failed to take into account the effect on other litigants of the disposal of evidence and documents. The public has an interest in protecting itself from unfair and illegal practices, and the remedies under the Clayton Act (15 U.S.C. § 17 et. seq.) are an integral part of the statutory scheme enacted to protect that public interest.

X

The preservation of the documents and evidence in these cases is essential for the prosecution of the civil class action antitrust suits pending against these same defendants in *In Re: South Central States Bakery Products Antitrust Litigation*, Master File No. MDL 282. If these documents and evidence are destroyed or altered, many months of effort will be wasted, and an even greater expenditure of time will be necessary for all ot the parties in those cases, as well as the Court hearing them, to attempt to reconstruct and redevelop the materials through pretrial discovery. In an attempt to preserve such evidence, Plaintiffs in the consolidated cases in *In Re: South Central States Bakery Products Antitrust Litigation*, Master File No. MDL 282 have filed a Motion to Preserve Documents, with supporting memorandum, and a copy of those papers is attached hereto as exhibit "A."

XI

The Courts have repeatedly recognized that vigorous private enforcement of the antitrust laws is a crucial supplement to suits brought by the United States Government. See e.g., *Hawaii* v. *Standard Oil Company of California*, 405 U.S. 251, 262, 92 S. Ct. 885, 891 (1972); *In Re Clark Oil & Refinery Corporation Antitrust Litigation*, 422 F. Supp. 503 (E.D. Wis. 1976). See also *Alyeska Pipeline Service Corp.* v. *Wilderness Society*, 421 U.S. 240, 263, 955 S. Ct. 1612, 1624 (1975). In enacting the treble damages provision of the Clayton Act, "Congress * * * expressed its belief that private antitrust litigation is one of the surest weapons for effective enforcement of the antitrust laws." *Minnesota Mining & Manufacturing Co.* v *New Jersey Wood Finishing Co.*, 381 U.S. 311, 318, 85 S. Ct. 1473, 1477 (1965). The Supreme Court has designated the private antitrust action a "bulwark of antitrust enforcement," stating that "the purposes of the antitrust laws are best served by insuring that the private action will be an ever-present threat to deter anyone contemplating business behavior in violation of the antitrust laws." *Perma Life Mufflers, Inc.* v. *International Parts Corp.*, 392 U.S. 134, 139 (1968). *Accord, Illinois Brick Co.* v. *Illinois,*

97 S. Ct. 206 (1977); *Hawaii* v. *Standard Oil Company of California*, supra; *Zenith Radio Corp. Hazeltine Research, Inc.*, 395 U.S. 100, 130-31, 89 S. Ct. 1562, 1580 (1969). In antitrust suits private plaintiffs serve the role of "private attorneys general":

"We think the longstanding policy of encouraging vigorous private enforcement of the antitrust laws, see, e.g., *Perma Life Mufflers, Inc.* v. *International Parts Corp.*, 392 U.S. 134, 139, 88 S. Ct. 1981, 1984, 20 L.Ed.2d 982 (1968), supports our adherence to the Hanover Shoe rule * * *. [W]e conclude that the legislative purpose in creating a group of 'private attorneys general' to enforce the antitrust laws under § 4, * * * is better served by holding direct purchasers to be injured to the full extent to the overcharge paid by them * * *." *Illinois Brick Co.* v. *Illinois*, supra, 97 S. Ct. at 2075.

XII

It is clear that the Government, by failing to make provisions for the protection of documents and evidence in these cases, is frustrating the public interests codified in the Clayton and Sherman Acts.

Therefore, it is submitted that the proposed Final Judgment be modified in order to provide for the retention and safeguarding of evidence and documents connected with the cases. This is necessary for the public interest so that the monitoring requirements of this Final Judgment can be fulfilled and so that the public interests codified in the Clayton Act can be protected in private antitrust actions against these Defendants.

Respectfully submitted,

Frank M. Auer *and* Evans, Feist & Auer *320 Louisiana Bank Building, Shreveport, Louisiana 71163; and* Franklin Jones, Jr. *and* Jones, Jones & Baldwin, *300 W. Austin Street, Marshall, Texas 75670; and* Arthur Gochman *and* Gochmen & Weir, *555 San Antonio Bank & Trust Bldg., San Antonio, Texas 78205.*

By: _____

Attorneys for Plaintiffs.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Objection to the Proposed Consent Decree and Final Judgment has been mailed to all counsel of record in in re: South Central States. Bakery Products Antitrust Litigation, Master File No. MDL 282, and to Mr. J. Albert Kroemer, Antitrust Division, Department of Justice, Room 7-B-13, 1100 Commerce St., Dallas, Tex. 75202, on this the —— day of February, 1978.

CHARLES HERRING, Jr.

[FR Doc. 78-8733 Filed 4-3-78; 8:45 am]

[4510-26]

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

TENNESSEE STANDARDS

Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On July 5, 1973, notice was published in the FEDERAL REGISTER (38 FR 17838) of the approval of the Tennessee plan and the adoption of Subpart P to Part 1952 containing the decision. The Tennessee plan provides for the adoption of Federal Standards as State standards by reference. Section 1953.20 of 29 CFR provides that "where any alteration in the Federal program could have an adverse impact on the 'at least as effective as' status of the State program, a program change supplement to a State plan shall be required." In response to Federal standard changes, the State has submitted by letter dated November 23, 1977, from James G. Neeley, Commissioner of Labor, Tennessee Department of Labor, to R. A. Wendell, Acting Regional Administrator, and incorporated as a part of the plan, amended State standards comparable to amendments to Federal standards. The State submission in addition to updating State standards includes the repromulgation of all previously approved State standards which were promulgated by the Department of Labor and Department of Public Health. The updated standards covered by this notice comparable to amend Federal Standards are:

29 CFR 1910.1044, Emergency Temporary Standard for Exposure to 1,2-dibromo-3-chloropropane, dated September 9, 1977; 29 CFR 1910.1044, corrections to the Emergency Temporary Standard for Exposure to 1,2-dibromo-3-chloropropane, dated September 16, 1977; 29 CFR 1910.1029 Coke Oven Emissions and corrections, dated October 22, 1976 and January 18, 1977 respectively.

These standards were promulgated by filing with the Tennessee Secretary of State on October 3, 1977 and July 1, 1977, respectively, pursuant to the Tennessee Occupational Safety and Health Act of 1972 (Title 50, Chapter 5, Tennessee Code annotated as amended July 1, 1977).

2. *Decision.* Having reviewed the State submission in comparison with the Federal standards, it has been determined that (1) those standards repromulgated by the State are identical to State standards previously approved on March 31, 1975 (40 FR 14383) July 20, 1976 (41 FR 29923) October 29, 1976 (41 FR 47613) December 30, 1977 (42 FR 65305), (2) updated standards are identical to Federal Standards. The standards are hereby approved.

3. *Location of supplement for inspection and copying.* A copy of the standard supplement along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Commissioner of Labor, 501 Union Building, Nashville, Tenn. 37219; office of the Regional Administrator, Suite 587, 1375 Peachtree Street NE., Atlanta, Ga. 30309; Office of the Director of Federal Compliance and State Programs, 200 Constitution Avenue NW., Washington, D.C. 20210.

4. *Public participation.* Under 29 CFR 1953.2(c) the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds good cause exists for not publishing the supplement to the Tennessee State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the Federal standards and are therefore deemed to be at least as effective.

2. The standards were adopted in accordance with procedural requirements of State law and further public participation would be unnecessary.

This decision is effective April 4, 1978.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667).)

Signed at Atlanta, Ga., this 23rd day of January 1978.

R. A. WENDELL,
Acting Regional Administrator.

[FR Doc. 78-8832 Filed 4-3-78; 8:45 am]

[4510-28]

Office of the Secretary

[TA-W-2852]

ALAN WOOD STEEL CO. CONSHOHOCKEN, PA.

Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on January 5, 1978, in response to a worker petition received on December 19, 1977, which was filed on behalf of workers and former workers engaged in employment related to the production of steel plate, alloy plate, floor plate and hot cold rolled sheet and strip steel products at the New York District Sales Office (located in Union, N.J.) of the Conshohocken, Pa. plant of Alan Wood Steel Co.

Notice of the investigation was published in the FEDERAL REGISTER on January 20, 1978 (43 FR 2952-2953). No public hearing was requested and none was held.

During the course of the investigation, it was established that all workers of Alan Wood Steel Co., Conshohocken, Pa. and the New York District Sales Office (located in Union, N.J.) were previously certified eligible to apply for adjustment assistance on February 28, 1978, in the revised certification resulting from the Office of Trade Adjustment Assistance investigations TA-W-2266 and TA-W-2267.

The existing certification will expire on October 21, 1979, unless terminated by the Secretary of Labor. Since workers newly separated, totally or partially, are covered by the existing certification, provided such separations occurred on or after the impact date (July 15, 1976) and on or before the certification expiration date (October 21, 1979), a new investigation would serve no purpose; consequently the investigation has been terminated.

Signed at Washington, D.C. this 28th day of March 1978.

HAROLD A. BRATT,
Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 78-8837 Filed 4-3-78; 8:45 am]

[4510-28]

[TA-W-2511]

AMERICAN BOSCH, SPRINGFIELD, MASS.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2511: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on October 27, 1977, in response to a worker petition received on October 25, 1977, which was filed by the International Union of Electrical Radio & Machine Workers on behalf of workers and former workers producing fuel injection systems at American Bosch Division of AMBAC Industries, Inc., Springfield, Mass.

Workers at American Bosch who were engaged in employment related to the production of fuel injection systems and were separated on or after February 1, 1975 were previously certified as eligible to apply for adjustment assistance (TA-W-132). The determination was signed on November 5, 1975; the certification expired on November 5, 1977.

The notice of investigation was published in the FEDERAL REGISTER on November 15, 1977 (42 FR 59132). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of AMBAC Industries, American Bosch, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met. Without regard to whether any of the other criteria have been met the following criterion has not been met.

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have "contributed importantly" to the separations, or threat thereof, and to the decrease in sales or production.

The Department's investigation revealed that American Bosch produces fuel injection systems. A survey of customers who purchased fuel injection systems from American Bosch was conducted. None of the customers who responded to the survey substituted purchases of imported fuel injection systems for those produced by American Bosch in 1976 or 1977.

Workers at American Bosch were covered in a previous certification which expired on November 5, 1977. Sales at American Bosch increased 26 percent in the first ten months of 1977 compared to the same period in 1976. Employment increased 23 percent in the first ten months of 1977 compared to the same period in 1976. Sales and employment increased in each quarter of 1977 compared to the respective quarter of 1976.

CONCLUSION

After careful review I conclude that all workers producing fuel injection systems at AMBAC Industries, American Bosch Division, Springfield, Mass. are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 24th day of March 1978.

HARRY GRUBERT,
Director, Office of Foreign Economic Research.

[FR Doc. 78-8838 Filed 4-3-78; 8:45 am]

[4510-28]

[TA-W-2468]

BROWN SHOE CO., CHARLESTON, MO.

Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance.

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2468: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on October 17, 1977, in response to a worker petition received on October 4, 1977, which was filed by the Boot & Shoe Worker's Union on behalf of workers and former workers producing women's dress shoes at the Charleston, MO, plant of the Brown Shoe Co.

The Notice of Investigation was published in the FEDERAL REGISTER on November 8, 1977 (42 FR 58210). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Brown Shoe Co., the U.S. Department of Commerce, the U.S. International Trade Commission, Industry analysts, and Department files.

On August 5, 1975, the Department issued a Notice of Certification regarding eligibility of the workers at the Charleston plant (TA-W-52). The certification had a termination date of May 3, 1975.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met.

That sales or production, or both, of the firm or subdivision have decreased absolutely.

The Department's investigation revealed that production and shipments from the Charleston plant increased 53 percent and 52 percent, respectively, from 1975 to 1976, and increased 10 percent and 12 percent, respectively, in the first nine months of 1977 compared to the same period of 1976.

Average plant employment increased 10 percent from 1975 to 1976, and increased 11 percent from 1976 to 1977. Although specific data was not obtained subsequent to September, 1977, the plant has been operating at capacity since the fourth quarter of 1977, and employees were working a 6-day week in January and February 1978. The plant was closed one week in April and the last week in September, 1977 for inventory. These were not lay-off periods due to lack of work.

CONCLUSION

After careful review, I conclude that all workers at the Charleston, MO plant of the Brown Shoe Co. are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 22nd day of March 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-8839 Filed 4-3-78; 8:45 am]

[4510-28]

[TA-W-2253]

COMMAND PRINT WORKS, FARMINGDALE, N.Y.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2253: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on August 15, 1977, in response to a worker petition received on June 9, 1977, which was filed on behalf of workers and former workers producing printed fabric at Prints Almo, Inc., Brooklyn, N.Y. (TA-W-2144). The investigation was subsequently expanded to include former workers at Command Print Works, Inc., Farmingdale, N.Y.

The Notice of Investigation was published in the FEDERAL REGISTER on September 2, 1977 (42 FR 44298). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Command Print Works, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met. Without regard to whether any of the other criteria have been met the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threats thereof, and to the absolute decline in sales or production.

Evidence developed in the Department's investigation revealed that the ratio of imports of finished fabric (dyed and printed) to domestic production was less than 2 percent from 1974 and 1977.

In addition a survey by the Department of major customers of Command Print Works, Inc. revealed that none purchased imported printed fabric.

CONCLUSION

After careful review I conclude that all workers at Command Print Works, Inc., Farmingdale, N.Y., are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 22nd day of March 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-8840 Filed 4-3-78; 8:45 am]

[4510-28]

[TA-W-2114 and TA-W-2208]

DELAVAL TURBINE, INC., TRENTON, N.J.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2114: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on June 1, 1977 in response to a worker petition received on May 31, 1977, which was filed by the United Steelworkers of America on behalf of workers and former workers producing rotor pumps, centrifugal pumps and turbines at the Trenton, N.J. plant of Delaval Turbine, Inc.

The notice of investigation was published in the FEDERAL REGISTER on June 17, 1977 (42 FR 30938). No public hearing was requested and none was held.

On June 23, 1977 a second petition was received. This petition was filed by the Pattern Makers Association of Philadelphia and Vicinity on behalf of workers and former workers producing steam turbines, pumps and worm gears at the Trenton, N.J. plant of Delavel Turbine Inc. The investigation revealed that the Pattern Makers Association represents workers in the Turbine Division. The Turbine Division was one of the subdivisions being investigated as a result of the petition received on May 31, 1977.

The information upon which the determination was made was obtained principally from officials of Delaval Turbine, Inc., its potential customers, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met.

That increases of imports of articles like or directly competitive with articles produced by the firm or subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Two divisions located at Trenton produce the petitioned for products, namely, the Turbine Division and the IMO Pump Division. These divisions have a common seniority unity for production employees.

The Turbine Division makes primarily steam turbines, centrifual pumps and compressors. The IMO Pump Division makes rotary positive displacement pumps.

The turbines manufactured by the Turbine Division of Delaval Turbine, Inc. are included in the import and production category, Turbines and Turbine-Generator Sets. U.S. imports of Turbines and Turbine-Generator Sets declined from $102 million in 1975 to $75 million in 1976, then increased to $96 million in 1977. The ratio of imports to domestic production of turbines and turbine-generator sets declined from 4.89 percent in 1975 to 2.82 percent in 1976, then increased to 3.30 percent in 1977.

The pumps manufactured by the Turbine Division of Delaval Turbine, Inc. are included in the import and production category, Pumps (except submersible). This is a large category that includes a wide variety of pumps.

U.S. imports of pumps (except submersible) increased from 5.5 million units in 1975 to 6.3 million units in 1976. Imports increased from 5.8 million units in the first eleven months of 1976 to 9.3 million units in the like period in 1977. The ratio of imports to domestic production of pumps increased from 57.0 percent in 1975 to 60.7 percent in 1976, and increased from 61.1 percent in the first eleven months of 1976 to 96.4 percent in the like period in 1977.

U.S. imports of pumps (except submersible) increased in value from $62.7 million in 1975 to $83.1 million in 1976, and increased from $74.6 million in the first eleven months of 1976 to $88.0 million in the like period in 1977. The ratio of imports to domestic production in value of pumps (except submersible) increased from 3.62 percent in 1975 to 4.19 percent in 1976, and increased from 4.11 percent in the first eleven months of 1976 to 4.49 percent in the like period of 1977.

The compressors made by the Turbine Division of Delaval Turbine, Inc. are included in the import and production category Air and Gas Compressors. U.S. imports of air and gas compressors increased from 239.1 thousand units in 1975 to 259.4 thousand units in 1976, and increased from 239.5 thousand units in the first eleven months of 1976 to 326.3 thousand units in the like period in 1977. The ratio of imports to domestic production in quantity of air and gas compressors increased from 18.8 percent in 1975 to 20.4 percent in 1976, then increased from 20.6 percent in the first eleven months of 1976 to 28.0 percent in the like period of 1977.

U.S. imports of air and gas compressors increased in value from $21.0 mil-

lion in 1975 to $39.9 million in 1976, and decreased from $37.9 million in the first eleven months of 1976 to $34.5 million in the like period of 1977. The ratio of imports to domestic production in value of air and gas compressors increased from 3.09 percent in 1975 to 5.23 percent in 1976, and declined from 5.42 percent in the first eleven months of 1976 to 4.60 percent in the like period of 1977.

The pumps manufactured by the IMO Pump Division are included in the category Hydraulic Fluid Power Pumps. There is no separate import category for hydraulic fluid power pumps, however, industry sources indicate that imports are negligible. Approximately 25 percent of the hydraulic fluid power pumps produced in the United States are exported.

A survey was conducted of the unsuccessful bids by the Turbine Division of Delaval Turbine, Incorporated during 1975 and 1976. The survey included purchasers and end users of turbines, pumps and compressors. All of the organizations surveyed awarded the contracts to domestic firms other than Delaval. Customers cited two principal reasons for favoring domestic suppliers. The first reason is that because of the custom made nature of these products, the customer must rely on the original manufacturer for nearly all replacement parts. Given the long service life of these machines and the extent to which international economic and political conditions can change during such a length of time, the users do not want to be dependent on a foreign source of replacement parts. The second reason is that users often hire a representative of the manufacturer to supervise the user's crew when the machine is being serviced. In order to do this, they must buy machines from manufacturers who have representatives stationed throughout the United States.

In addition, a substantial portion of the output of the Turbine Division consists of exports and replacement parts. The survey of end users and purchasers of turbines, pumps and compressors revealed that original manufacturers of this type of equipment do not face import competition in the market for replacement parts.

A comparison of quantity and value import and domestic production data reveals that for pumps and compressors, imports are concentrated among the lower-priced pumps and compressors. Among the higher-priced pumps, and compressors such as those Delaval makes, value data reveal that the United States was a net exporter in every year from 1972 through 1976 and in the first eleven months of 1977.

The Office of Trade Adjustment Assistance conducted a survey of some customers of the IMO Pump Division of Delaval Turbine, Incorporated. None of the customers responding purchased imported pumps.

CONCLUSION

After careful review, I conclude that all workers at the Turbine Division and IMO Pump Division of Delaval Turbine, Incorporated, are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 22nd day of March 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-8841 Filed 4-3-78; 8:45 am]

[4510-28]

[TA-W-2102]

EDINBURG MANUFACTURING CO., EDINBURG, VA.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2102: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on May 26, 1977, in response to a worker petition received on May 25, 1977, which was filed on behalf of workers and former workers producing women's dresses and sportswear at the Edinburg, Va. plant of the Edinburg Manufacturing Co., Inc.

A separate petition (TA-W-2141) was filed on behalf of workers and former workers located at Edinburg Manufacturing's other plant, located at Petersburg, W. Va.

The Notice of Investigation was published in the FEDERAL REGISTER on June 17, 1977 (42 FR 30938). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Edinburg Manufacturing Co., Windsor Knit Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles produced by the firm or subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The Department conducted a survey of some of the customers purchasing women's dresses and sportswear in 1976 and the first half of 1977 from Edinburg Manufacturing's parent, Windsor Knit. Most of the respondents to the survey reported that they had increased purchases from Windsor Knit in 1976 compared to 1975. This is consistent with the increase in total company sales during this period. Most of the responses relative to the 1977 period indicated that imports were not adversely affecting their decision to buy from Windsor Knit. Most of these respondents did not make any import purchases of dresses or sportswear in the first half of 1977.

CONCLUSION.

After careful review I conclude that all workers at the Edinburg, Va. plant of Edinburg Manufacturing Co., Inc., are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 22nd day of March 1978.

HARRY GRUBERT,
Director, Office of Foreign Economic Research.

[FR Doc. 78-8845 Filed 4-3-78; 8:45 am]

[4510-28]

[TA-W-2141]

EDINBURG MANUFACTURING CO., PETERSBURG, W. VA.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2141: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on June 13, 1977 in response to a worker petition received on June 13, 1977 which was filed on behalf of workers and former workers producing women's dresses and sportswear at the Petersburg, W. Va. plant of the Edinburg Manufacturing Co., Inc.

A separate petition (TA-W-2102) was filed on behalf of workers and former workers located at Edinburg Manufacturing's other plant, located at Edinburg, Va.

The Notice of Investigation was published in the FEDERAL REGISTER on June 24, 1977 (42 FR 32328). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Edinburg Manufacturing Co., Windsor Knit, Inc., its customers, the U.S. Department of Commerce, the U.S. Interna-

tional Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met.

Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The Department conducted a survey of some of the customers purchasing women's dresses and sportswear in 1976 and the first half of 1977 from Edinburg Manufacturing's parent, Windsor Knit. Most of the respondents to the survey reported that they had increased purchases from Windsor Knit in 1976 compared to 1975. This is consistent with the increase in total company sales during this period. Most of the the responses relative to the 1977 period indicated that imports were not adversely affecting their decision to buy from Windsor Knit. Most of these respondents did not make any import purchases of dresses or sportswear in the first half of 1977.

CONCLUSION

After careful review I conclude that all workers at the Petersburg, W. Va., plant of Edinburg Manufacturing Co., Inc., are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 22nd day of March 1978.

HARRY GRUBERT,
Director, Office of Foreign Economic Research.

[FR Doc. 78-8844 Filed 4-3-78; 8:45 am]

[4510-28]

[TA-W-2565]

ENCORE SHOE CORP., ROCHESTER AND CLAIRMONT, N.H.

Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2565: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 or the Act.

The investigation was initiated on November 7, 1977, in response to a worker petition received on October 31, 1977, which was filed on behalf of workers and former workers producing women's shoes and boots at the Encore Shoe Corp., Rochester, N.H. The investigation was expanded to include the Clairmont, N.H. plant of Encore Shoe Corp., which is part of the integrated production process.

The notice of investigation was published in the FEDERAL REGISTER on November 18, 1977 (42 FR 59584). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Encore Shoe Corp., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adustment assistance each of the group eligibility requirements of section 222 of the Act must be met. Without regard to whether any of the other criteria have been met the following criterion has not been met.

That sales or production, or both, of such firm or subdivision have decreased absolutely.

The Department's investigation revealed that sales and production of women's shoes and boots at Encore Shoe Corp. increased in 1976 compared to 1975 and increased during the first eleven months of 1977 compared to the same period in 1976. Encore Shoe Corp. produces to order thus, sales and production are the same.

CONCLUSION

After careful review, I conclude that all workers at Encore Shoe Corp., Rochester and Clairmont, N.H., are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 24th day of March 1978.

HARRY GRUBERT,
Director, Office of Foreign Economic Research.

[FR Doc. 78-8842 Filed 4-3-78; 8:45 am]

[4510-28]

[TA-W-2843]

EGGIE MOTOR CO., INC., OAKLYN, N.J.

Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2843: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on January 4, 1978, in response to a worker petition received on December 14, 1977, which was filed on behalf of former workers engaged in the sale and service of new and used automobiles at Eggie Motor Co., Inc., Oaklyn, N.J.

The Notice of Investigation was published in the FEDERAL REGISTER on February 3, 1978 (43 FR 4696). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Eggie Motor Co., Inc. and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met. The Department has determined that services are not "articles" within the meaning of section 222 of the Act, and that independent firms for which the subject firm provides services cannot be considered to be the "workers' firm."

Eggie Motor Co. was incorporated in New Jersey in March 1945, as an independently owned automobile dealership engaged in the sale and service of new and used passenger cars, trucks, and parts for those vehicles. Prior to May 9, 1977, all new passenger cars and trucks were supplied by American Motors Corp.

The dealership was located at 100 White Horse Pike, Oaklyn, N.J. The location contained an automobile showroom, general administrative offices, automobile parts department, automobile service area, and storage area.

Workers at Eggie Motor Co., Inc. do not produce an article within the meaning of section 222(3) of the Act and this Department has already determined that the performance of services are not covered by the adjustment assistance program. See Notice of Determination in Pan American World Airways, Inc. (TA-W-153, 40 FR 54639). The only question in this case is whether American Motors Corp., i.e., a firm which produces an article, namely automobiles, and for whom the service is provided, can be considered the "workers' firm." The Department has also previously determined that an independent firm for whom such services are provided cannot be considered the "workers' firm." See Notice of Determination in Nu-Car Driveaway, Inc. (TA-W-393, 41 FR 12749).

American Motors Corp. had no capital or financial investment in the dealership and no control over its operation. Eggie Motors had no financial investment in American Motors.

The dealership operated under a franchise agreement that is contracted between all independent dealers and American Motors Corporation. The franchise agreement governs the use

of trademarks, delivery of automobiles to the dealership and establishes the standards with respect to the facilities maintained by the dealership.

Eggie Motor Co. closed the dealership on December 31, 1976. The decision was based on the fact that the company was experiencing financial losses.

The workers upon whose behalf this petition was filed were hired and paid by Eggie Motor Co. They were supervised by Eggie Motor Co. personnel only. All employment benefits which they received were provided by Eggie Motor Co.

CONCLUSION

After careful review, I determine that all workers at Eggie Motor Co., Inc., Oaklyn, N.J. are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 24th day of March 1978.

HARRY GRUBERT,
Director, Office of Foreign Economic Research.

[FR Doc. 78-8846 Filed 4-3-78; 8:45 am]

[4510-28]

[TA-W-2472]

FORD MOTOR CO. MICHIGAN PROVING GROUNDS, ROMEO MICH.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2472: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on October 17, 1977, in response to a worker petition received on October 6, 1977, which was filed on behalf of workers and former workers testing cars and trucks at the Ford Motor Co. Michigan Proving Grounds, Romeo, Mich.

The notice of investigation was published in the FEDERAL REGISTER on November 8, 1977 (42 FR 58210). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the Ford Motor Co., industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. The Department has determined that services are not "articles" within the meaning of section 222 of the Act.

The Department's investigation revealed that the Ford Motor Co. Michigan Proving Grounds is owned and operated by the Ford Motor Co., Dearborn, Mich. The service performed by these workers, that of test driving Ford automotive vehicles, is not integrated into the production of domestic Ford Automobiles. Workers at the Michigan Proving Grounds test all Ford Motor Co. passenger cars and trucks, both domestic and imported, as well as prototype cars and trucks. Employment levels of test drivers are not geared to production levels of Ford automotive vehicles but instead are dependent upon engineering programs which in most cases have a long lead time. Workers at the Michigan Proving Grounds do not produce an article within the meaning of section 222(3) of the Act and this Department has already determined that the performance of services is not covered by the adjustment assistance program. See Notice of Determination in Pan American World Airways Inc. (TA-W-153, 40 FR 54639).

CONCLUSION

After careful review I determine that all workers at the Ford Motor Co. Michigan Proving Grounds, Romeo, Mich., are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed in Washington, D.C., this 22nd day of March 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-8843 Filed 4-3-78; 8:45 am]

[4510-28]

[TA-W-2351]

THE GREAT WESTERN RAILWAY CO., LOVELAND, COLO.

Revised Certification of Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, the Department of Labor issued a certification of eligibility to apply for adjustment assistance on January 31, 1978, applicable to workers and former workers of The Great Western Railway Co. of Loveland, Colo., a subsidiary of The Great Western Sugar Co. The Notice of Certification was published in the FEDERAL REGISTER on February 7, 1978, (43 FR 5099).

Following a request of a former worker concerning the impact date, a further investigation was instituted by the Director of the Office of Trade Adjustment Assistance. A review of the case revealed that a decline in employment occurred in January 1977. These layoffs were not covered by the original impact date of February 1, 1977.

The intent of the certification is to cover all workers at The Great Western Railway Co. who were affected by the declines in production at the Johnstown, Colo., molasses and monosodium glutamate plants and the Longmont, Colo., molasses plant which were related to import competition. The certification, therefore, is revised providing a new impact date of January 1, 1977.

The revised certifiction applicable to TA-W-2351 is hereby issued as follows:

All workers at The Great Western Railway Co., Loveland, Colo., who became totally or partially separated from employment on or after January 1, 1977, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 22nd day of March 1978.

HARRY GRUBERT,
Director, Office of Foreign Economic Research.

[FR Doc. 78-8847 Filed 4-3-78; 8:45 am]

[4510-28]

[TA-W-1636]

GREAT WESTERN SUGAR CO., LONGMONT, COLO.

Revised Certification of Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, the Department of Labor issued a certification of eligibility to apply for adjustment assistance on August 16, 1977, applicable to workers and former workers producing sugar at te Longmont, Colo. plant of the Great Western Sugar Co. The Notice of Certification was published in the FEDERAL REGISTER on August 26, 1977 (42 FR 43153).

At the request of a petitioner, a further investigation was instituted by the Director of the Office of Trade Adjustment Assistance. A review of the case revealed that some layoffs of nonseasonal workers occurred in the early part of February 1977. These layoffs were not covered by the original impact date of February 24, 1977.

The intent of the Certification is to cover all workers at the Longmont, Colo. plant of the Great Western Sugar Co., who were affected by the decline in production of sugar related to import competition. The certification, therefore, is revised, providing a new impact date of February 1, 1977.

The revised certification applicable to TA-W-1636 is hereby issued as follows:

All workers at the Longmont, Colo. plant of the Great Western Sugar Co. who became totally or partially separated from employment on or after February 1, 1977, are eligible to apply for Adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 23rd day of March 1978.

HARRY GRUBERT,
Director, Office of Foreign Economic Research

[FR Doc. 78-8848 Filed 4-3-78; 8:45 am]

[4510-28]

[TA-W-2727]

THE HANNA FURNACE CORP., BUFFALO, N.Y.

Negative Determination Regarding Application for Reconsideration

On March 8, 1978, the petitioner requested administrative reconsideration of the Department of Labor's negative determination regarding eligibility to apply for worker adjustment assistance. This determination was published in the FEDERAL REGISTER on January 7, 1978 (43 FR 5100).

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on mistake in the determination of facts previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justifies reconsideration of the decision.

The petitioner raises one issue of substance which he felt indicated a reversal by the Department of its negative determination. He claimed that in the fourth quarter of 1977, imports of merchant pig iron had increased and that the increase resulted in imports accounting for 41 percent of the nation's supply of merchant pig iron in that quarter.

The Department's denial was based on the fact that imports of merchant pig iron had declined both absolutely and relative to domestic shipments in 1976 when compared to 1975 and in the first three quarters of 1977 when compared to the same period the year earlier. Except for 1975 when imports increased significantly on both an absolute and relative basis, imports have been on a general downward trend since 1972. Imports of merchant pig iron for the entire year 1977 were 373,000 tons compared to 415,000 tons in 1976. Furthermore, relative to domestic shipments, imports were down to 17.7 percent in 1977 compared to 19.2 percent in 1976.

Historically, quarterly import data fluctuate substantially. Recognizing that imports registered an upward movement in the last quarter of 1977, the overall performance for the year was down from 1976, continuing the decline of the previous year. A one-quarter change in the import picture in the context of the long-term downward trend of imports, as is true in this case, is not sufficient to warrant a reversal of the Department's decision. If the petitioner considers that import competition is increasing, he is entitled to submit a new petition on behalf of the workers of The Hanna Furnace Corp.

CONCLUSION

After review of the application and the investigative file, I conclude that there has been no error or misinterpretation of fact or misinterpretation of the law which would justify reconsideration of the Department of Labor's prior decision. The application is, therefore, denied.

Signed at Washington, D.C., this 24th day of March 1978.

HARRY GRUBERT,
Director, Office of Foreign Economic Research.

[FR Doc. 78-8849 Filed 4-3-78; 8:45 am]

[4510-28]

[TA-W-2702]

INTERNATIONAL MANUFACTURING CO., ROXBURY, MASS.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-2702: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on December 5, 1977, in response to a worker petition received on November 22, 1977 which was filed on behalf of workers and former workers producing infants' furniture at International Manufacturing Co., Roxbury, Mass.

The notice of investigation was published in the FEDERAL REGISTER on December 16, 1977 (42 FR 63487). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of International Manufacturing Co., the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met. Without regard to whether any of the other criteria have been met the following criterion has not been met.

That sales or production, or both, of such firm have decreased absolutely.

The Department's investigation revealed that sales by International Manufacturing Co. increased 50 percent in 1976 compared to 1975, and 28 percent in the first eleven months of 1977 compared to the same period in 1976.

Unit production of International Manufacturing Co.'s three product lines—walker-trainers, car seats, and strollers—increased 52 percent, 57 percent and 81 percent, respectively, in 1976 compared to 1975. Production increased 31 percent, 27 percent, and 22 percent, respectively, for walker-trainers, car seats, and strollers, in the first eleven months of 1977 compared to the same period in 1976.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that neither sales nor production have declined absolutely at International Manufacturing Co., Roxbury, Mass., as required for certification under Section 222 of the Trade Act of 1974.

Signed at Washington, D.C. this 22nd of March 1978.

HARRY GRUBERT,
Director, Office of Foreign Economic Research.

[FR Doc. 78-8850 Filed 4-3-78; 8:45 am]

[4510-28]

[TA-W-2671]

INTERNATIONAL SHOE CO., ST. LOUIS, MISSOURI BOX DEPARTMENT

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2671: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on November 29, 1977 in response to a worker petition received on November 14, 1977 which was filed on behalf of workers and former workers producing shoe boxes at the St. Louis, MO Box Department of the International Shoe Co.

The notice of investigation was published in the FEDERAL REGISTER on December 16, 1977, (42 FR 63486). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the International Shoe Co., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of

eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the act must be met. It is concluded that all of the requirements have been met.

Imports of men's dress and casual footwear increased, in absolute terms, increased 23.6 percent from 1975 to 1976, and declined 1.6 percent in the first nine months of 1977 compared to the same period of 1976. The ratios of imports to domestic production and consumption increased from 58.7 percent and 37.0 percent, respectively, in 1975 to 70.4 percent and 41.3 percent, respectivley, in 1976. The same ratios increased from 69.1 percent and 40.9 percent, respectively, in the first nine months of 1976 to 75.0 percent and 42.8 percent respectively, in the same period of 1977.

Imports of women's nonrubber footwear, except athletic, increased, in absolute terms, increased .2 percent from 1975 to 1976, and declined 8.9 percent in the first nine months of 1977 compared to the same period of 1976.

The ratios of imports to domestic production and consumption declined from 119.1 percent and 54.4 percent, respectively in 1975 to 117.9 percent and 54.1 percent, respectively, in 1976. The same ratios increased from 119.9 percent and 54.5 percent, respectively, in the first nine months of 1976 to 124.9 percent and 55.5 percent, respectively, in the first nine months of 1977.

Production of shoe boxes at St. Louis is part of International's integrated shoe production operation. Therefore, shoe box production is directly related to International's total footwear production.

Both the total company production of footwear and the production of shoe boxes at St. Louis declined from 1976 to 1977, in the first eleven months.

International began importing footwear in January 1977 and has continued to do so in each subsequent month. The volume of imports from January through November 1977 was equivalent to 5 percent of International's total volume of footwear production. Importing eliminates the need for shoe box production, since the imported shoes are already packaged.

The U.S. International Trade Commission recently found that certain footwear articles, including men's dress and casual shoes and women's nonrubber footwear, are being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic industry producing such articles.

In the case of men's dress and casual footwear, the ratio of imports to domestic production was greater than 50 percent in each of the past five years, reaching a peak of 75 percent in the first nine months of 1977. In the women's nonrubber footwear sector, the import penetration rate was greater than 99 percent throughout the past five years, reaching a high of 124.9 percent in the first nine months of 1977.

In addition to the general import influence in the industry and the company's own recent import program, a Department survey revealed that major customers of International decreased purchases from International Shoe and increased purchases of imports.

The import influence on production by International and, in turn, on shoe box production at the St. Louis Box Department, adversely affected employment at the St. Louis plant. Two-thirds of the workforce at the plant were laid off for one-week periods eleven times during 1977. The plant was closed for all production operations during these weeks. Only the shipping crew was unaffected. None of the lay-off weeks were seasonal, rather, they were due to lack of work.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with men's and women's shoes produced by the International Shoe Co. contributed importantly to the decline in production of shoe boxes, as part of the integrated company operation, and to the total or partial separation of workers at the St. Louis, Mo. Box Department of the firm. In accordance with the provisions of the Act, I make the following certification:

All workers at the St. Louis, Mo. Box Department of the International Shoe Co. who became totally or partially separated from employment on or after November 8, 1976 are eligible to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 24th day of March 1978.

HARRY GRUBERT,
Director, Office of Foreign Economic Research.

[FR Doc. 78-8851 Filed 4-3-78; 8:45 am]

[4510-28]

[TA-W-2429]

JEMY SPORTSWEAR, INC., NEW BEDFORD, MASS.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2429: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on October 6, 1977, in response to a worker petition received on October 3, 1977, which was filed on behalf of workers and former workers producing women's blouses, skirts, and pants at Jemy Sportswear, Inc., New Bedford, Mass.

The Notice of Investigation was published in the FEDERAL REGISTER on October 25, 1977 (42 FR 56375). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Jemy Sportswear, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

A survey of clothing manufacturers who represented almost 100 percent of Jemy Sportswear's total business during 1976 indicated that the clothing manufacturers did not import women's blouses, skirts, and pants and did not provide contract work for foreign firms. Sales of women's clothing by these clothing manufacturers increased from 1976 to 1977. Furthermore, production in both quantity and value at Jemy Sportswear increased from 1975 to 1976 and from the first nine months of 1976 to the first nine months of 1977.

CONCLUSION

After careful review of the facts obtained in the investigation, I determine that workers at Jemy Sportswear, Inc., New Bedford, Mass., are denied eligibility to apply for adjustment assistance.

Signed at Washington, D.C. this 23rd day of March 1978.

HARRY GRUBERT,
Director, Office of Foreign Economic Research.

[FR Doc. 78-8852 Filed 4-3-78; 8:45 am]

[4510-28]

[TA-W-2313]

KARMEL TEXTILE CO., HACKENSACK, N.J.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2313: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on August 31, 1977, in response to a worker petition received on August 29, 1977, which was filed by the Amalgamated Clothing and Textile Workers of America on behalf of workers and former workers cutting fabric at Karmel Textile Co., Hackensack, N.J. The investigation revealed that the workers warehouse, cut, fold, and ship fabric.

The notice of investigation was published in the FEDERAL REGISTER on September 20, 1977 (42 FR 47271). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Karmel Textile Co., its convertor, customers of the convertor, the Department of Commerce, the International Trade Commission, the National Cotton Council of America, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. Without regard to whether any of the other criteria have been met the following criterion has not been met.

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separation, or threats thereof, and to the absolute decline in sales or production.

A survey of customers who receive fabric shipped by Karmel reflect the minor influence of imports in Karmel's market. Customers responding to the survey indicated that during the period 1975 through the first 9 months of 1977 they either did not import finished fabric or that purchases of imported fabric represented a small percentage of their total purchases of finished fabric. The consensus among the respondents was that there was no import influence in the market for finished fabric.

Imports of finished fabric decreased in absolute terms, in each year from 1973 through 1975. Imports increased 14 percent from 1975 to 1976 and remained stable in the first 9 months of 1977 compared to the first 9 months of 1976.

The ratios of imports to domestic production and consumption increased from 1.6 percent for each in 1975 to 1.8 percent for each in 1976. In each year since 1973 imports of finished fabrics have been less than 2 percent of domestic production.

CONCLUSION

After careful review I conclude that all workers at Karmel Textile Co., Hackensack, N.J., are denied eligibility to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 22d day of March 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 8853 Filed 4-3-78; 8:45 am]

[4510-28]

[TA-W-2635]

KEIBLER INDUSTRIES, INC., NEW KENSINGTON, PA.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2635: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on November 21, 1977, in response to a worker petition received on November 14, 1977, which was filed on behalf of workers and former workers producing demolition equipment at Keibler Industries, Inc., New Kensington, Pa.

The notice of investigation was published in the FEDERAL REGISTER on November 6, 1977 (42 FR 61696). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Keibler Industries, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threats thereof, and to the absolute decline in sales or production.

Keibler Industries produce demolition equipment to remove slag buildup in blast furnaces. Imports of demolition equipment to remove slag buildup in blast furnaces enter the United States under item 664.05 of the Tariff Schedule of the United States Annotated. There are no known imports of demolition equipment into the United States.

CONCLUSION

After careful review of the facts, I conclude that all workers at Keibler Industries, Inc., New Kensington, Pa., be denied eligibility to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 22d day of March 1978.

HARRY GRUBER,
Director, Office of Foreign Economic Research.

[FR Doc. 78-8854 Filed 4-3-78; 8:45 am]

[4510-28]

[TA-W-2337]

KRAMER CORP. D.B.A. LIFE-TIME COS., AVON, MASS.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2337: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on September 13, 1977, in response to a worker petition received on September 9, 1977, which was filed on behalf of workers and former workers producing combs and brushes at Kramer Corp. d.b.a. Life-Time Cos., Avon, Mass.

The notice of investigation was published in the FEDERAL REGISTER on October 4, 1977, (42 FR 54031). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from Kramer Corp., its customers, the American Brush Manufacturer's Association, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. It is concluded that all of the requirements have been met.

Imports, in quantity, of toiletry brushes decreased in 1975 to 33.5 million, increased in 1976 to 61.9 million and decreased to 43.3 million in the first 9 months of 1977 compared to

44.1 million in the first 9 months of 1976. The ratios of imports to domestic production and consumption increased from 43.8 percent and 30.5 percent, respectively, in 1975 to 100.2 percent and 50.0 percent, respectively, in 1976, and 144.3 percent and 59.1 percent, respectively, in the first 9 months of 1977.

Imports of combs decreased in 1975 to 13.1 million, increased in 1976 to 28.2 million and increased to 47.8 million in the first 9 months of 1977 compared to 20.8 million in the first 9 months of 1976. The ratio of imports to domestic production increased from 2.5 percent in 1975 to 5.2 percent in 1976, and 11.8 percent in the first 9 months of 1977.

Customers of brushes and combs produced by Life-Time, who were surveyed, indicated that they reduced purchases from Life-Time in 1976 and the first 9 months of 1977 while increasing purchases of imported combs and brushes.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with brushes and combs produced by Kramer Corp. d.b.a. Life-Time Cos., Avon, Mass., contributed importantly to the decline in sales and to the total or partial separation of workers at the plant. In accordance with the provisions of the Act, I make the following certification:

All workers at Kramer Corp. d.b.a. Life-Time Cos., Avon, Mass., who became totally or partially separated from employment on or after July 1, 1977, and before September 1, 1977, are eligible to apply for adjustment assistance under the Trade Act of 1974. All workers who were separated on or after September 1, 1977, are not eligible to apply for adjustment assistance.

Signed at Washington, D.C., this 22d of March 1978.

HARRY GRUBERT,
Director, Office of Foreign Economic Research.

[FR Doc. 78-8855 Filed 4-3-78; 8:45 am]

[4510-28]

[TA-W-2386]

MCDONALD'S ENTERPRISES, INC. KANSAS CITY, KANS.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA/W/2386: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on September 27, 1977 in response to a worker petition received on September 19, 1977 which was filed on behalf of former workers producing women's and misses' dresses and sportswear at McDonald's Enterprises, Inc., Kansas City, Kans.

The Notice of Investigation was published in the FEDERAL REGISTER on October 14, 1977 (42 FR 55316). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of McDonald's Enterprises, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Evidence developed during the course of the investigation revealed that the impact of imports in the domestic market for women's and misses' dresses has been small and did not change appreciably in 1976 from 1975 or in the first three quarters of 1977 from the same period in 1976. Imports of women's and misses' dresses increased 2 percent from 645 thousand dozen in 1975 to 659 thousand dozen in 1976. The ratio of imports to domestic production remained stable at 4.5 percent in 1976 from 1975. Imports of women's and misses' dresses declined from 540 thousand dozen units during January-September 1976 to 471 thousand dozen units during January-September 1977.

In excess of 90 percent of McDonald's output was women's and misses' dresses. McDonald's contracted exclusively for one clothing manufacturer. That clothing manufacturer closed in the spring of 1977. The manufacturer for whom McDonald's produced dresses and sportswear did not purchase imports of such products or contract with any foreign sources. Customers of that manufacturer who were surveyed either did not purchase any imported dresses or increased purchases of domestic dresses to a greater extent than they increased purchases of imports.

CONCLUSION

After careful review of the facts obtained in the investigation, I determine that workers of McDonald's Enterprises, Inc., Kansas City, Kans. are denied eligibility to apply for adjustment assistance.

Signed at Washington, D.C., this 22d of March 1978.

HARRY GRUBERT,
Director, Office of Foreign Economic Research.

[FR Doc. 78-8856 Filed 4-3-78; 8:45 am]

[4510-28]

TA-W-2637]

NEW KNIT MANUFACTURING CO., LOWELL, MASS.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of labor herein presents the results of TA-W-2637: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on November 21, 1977 in response to a worker petition received on November 11, 1977 which was filed on behalf of workers and former workers producing men's and boys' sweaters and swimwear at New Knit Manufacturing Co., Lowell, Mass.

The notice of investigation was published in the FEDERAL REGISTER on December 6, 1977, (42 FR 61696). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from New Knit manufacturing Co., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, the National Cotton Council of America, the American Textile Manufacturers Institute, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the act must be met. It is concluded that all of the requirements have been met.

Imports of men's and boys' bathing suits declined from 117.0 thousand dozen in 1974 to 116.9 thousand dozen in 1975 and then increased to 161.6 thousand dozen in 1976, an increase of 38 percent. Imports declined from 123.6 thousand dozen in the first 9 months of 1976 to 94.1 thousand dozen in the first 9 months of 1977, a decline of 24 percent. The ratios of imports to domestic production and consumption increased from 7.3 percent and 6.8 percent, respectively, in 1975, to 8.5 percent and 7.9 percent respectively, in 1976.

Imports of men's and boys' sweaters, knit cardigans, and pullovers increased from 19.5 million units in 1972 to 26.2

million units in 1973, declined to 23.3 million units in 1974 and 20.4 million units in 1975 and then increased to 26.5 million units in 1976, an increase of 30 percent. Imports increased from 3.1 million units in the first 6 months of 1976 to 9.2 million units in the first 6 months of 1977, an increase of 197 percent. The ratios of imports to domestic production and consumption increased from 36.6 percent and 29.0 percent, respectively, in 1975, to 67.8 percent and 40.7 percent, respectively, in 1976.

Imports of men's and boys' sweaters, knit cardigans, and pullovers have captured an increasing share of the domestic market, as evidenced by the significant import to domestic production and consumption ratios. For weaters, imports constituted 2 out of every 5 sold in the United States in 1976.

Production of sweaters at New Knit increased prior to the plant closure. However, production had declined 50 percent between 1973 and 1975. While recoveries occurred in 1976 and 1977, production remained well below the 1973 level. In 1977, due to lack of orders, New Knit began performing contract work, although business did not increase sufficiently to keep the plant operating efficiently. The plant closed in November 1977.

Customers who purchased men's and boys' sweaters from New Knit indicated that they purchased imported sweaters, both from offshore sources and through other domestic firms. Customers who purchased bathing suits from New Knit also indicated that they purchased imported bathing suits.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with men's and boys' sweaters and bathing suits produced at New Knit Manufacturing Co., Lowell, Mass., contributed importantly to the decine in the sales or production and to the total or partial separations of the workers at that firm. In accordance with the provisions of the act, I make the following certification:

All workers at New Knit Manufacturing Co., Lowell, Mass. who became totally or partially separated from employment on or after April 1, 1977 are eligible to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 27th day of March 1978.

Harry Grubert,
Director, Office
Foreign Economic Research.

[FR Doc. 78-8857 Filed 4-3-78; 8:45 am]

[4510-28]

[TA-W-2307]

NORTHERN SHOE CO., CLINTONVILLE, WIS.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2307: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on August 30, 1977 in response to a worker petition received on August 29, 1977, which was filed on behalf of workers and former workers producing women's and children's footwear at the Clintonville, Wisconsin plant of Northern Shoe Co.

The notice of investigaton was published in the Federal Registr on September 20, 1977 (42 FR 47270). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Northern Shoe Co., its customers, the Boot and Shoe Workers of America, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the act must be met. Without regard to whether any of the other criteria have been met the following criterion has not been met.

That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated.

The Department's investigation revealed that average employment of producton workers at the Clintonville plant increased 54.2 percent from 1974 to 1975, increased 43.2 percent from 1975 to 1976, and increased 81.1 percent from 1976 to 1977. Employment increased in every quarter of 1976 and 1977 compared to the same quarter of the previous year. Average hours worked per week decreased 1.8 percent from 1975 to 1976, and increased 1.6 percent from 1976 to 1977. There is no indication that current workers are threatened with any involuntary separations.

Conclusion

After careful review, I conclude that all workers at the Clintonville, Wisconsin plant of Northern Shoe Co., are denied eligibility to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 21st day of March 1978.

Harry Grubert,
Director, Office of
Foreign Economic Research.

[FR Doc. 78-8858 Filed 4-3-78; 8:45 am]

[4510-28]

[TA-W-2432]

OAHU SUGAR COMPANY, LTD., WAIPAHU, HAWAII

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2432: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on October 6, 1977, in response to a worker petition received on September 19, 1977, which was filed on behalf of workers and former workers producing sugar cane and raw sugar at Oahu Sugar Co., Ltd., Waipahu, Hawaii.

The Notice of Investigation was published in the Federal Register on October 25, 1977 (42 FR 56375). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Oahu Sugar Co., the Hawaiian Sugar Planters Association, the California and Hawaiian Cooperative, the U.S. Department of Agriculture, the State of Hawaii Department of Agriculture, the U.S. International Trade Commission, the U.S. Department of Commerce, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met. The investigation has revealed that all the requirements have been met.

Imports of sugar in 1975 totaled 3.88 million short tons and imports in 1976 increased 20 percent to 4.66 million short tons. Imports increased from 0.88 million short tons in the first quarter of 1976 to 1.06 million short tons in the first quarter of 1977. The ratio of imports to domestic production increased from 59 percent in 1975 to 66 percent in 1976. The ratios of imports to domestic production and consumption increased from 47 percent and 32 percent, respectively, in the first quarter of 1976 to 63 percent and 39 percent, respectively, in the first quarter of 1977.

Prior to 1974, imports of sugar were regulated by statute. Since the expira-

tion of the Sugar Act on December 31, 1974, imported sugar has entered the United States in the absence of price restrictions and quota levels. As a result, domestic prices of sugar have been merged with world sugar prices subjecting domestic prices to the competitive forces of an increased supply of sugar in a previously regulated market.

Sugar prices have dropped from 1974 when prices rose to 57.3 cents per pound, to the January 1976 price of 11.5 cents per pound. Presently the price of raw sugar is under 11 cent per pound. Domestic sugar growers have been selling their products at prices below the cost of production. Although price supports were instituted by the Department of Agriculture in 1977 raising the price paid to domestic producers, that price is still below Oahu Sugar Co.'s cost of production. This disparity in cost of production and net return on sales of sugar has caused an absolute decline in sales and permanent separations of employees in 1976 and 1977 from the Oahu Sugar Co. In addition there exists a threat of further declines in sales and further separations of workers due to the expectations of continued pressure from imports of sugar.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with sugar cane and raw sugar produced at Oahu Sugar Co., Ltd., Waipahu, Hawaii contributed importantly to the decline in sales and separation of workers of that plantation. In accordance with the provisions of the Act, I make the following certification:

All workers at the Oahu Sugar Co., Ltd., Waipahu, Hawaii who became totally or partially separated from employment on or after September 12, 1976, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 22nd day of March 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-8859 Filed 4-3-78; 8:45 am]

[4510-28]

[TA-W-2494]

OLYMPIA INDUSTRIES, INC., TUSCALOOSA, ALA.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2494: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on October 20, 1977, in response to a worker petition received on October 7, 1977, which was filed on behalf of workers and former workers engaged in textiles and the dyeing of yarn at the Tuscaloosa, Ala. plant of Olympia Industries, Inc. The investigation revealed that the plant produced only polyester yarn.

The Notice of Investigation was published in the FEDERAL REGISTER on November 11, 1977 (42 FR 57174). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Olympia Industries, Inc., its customers, the American Textile Manufacturer's Institute, Inc., the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met. Without regard to whether any of the other criteria have been met the following criterion has not been met.

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threats thereof, and to the absolute decline in sales or production.

Evidence developed during the course of the investigation revealed that the impact of imported yarn in Olympia Industries, Inc.'s market for yarn has been small.

A survey of customers of Olympia Industries, Inc., reflected the minor influence of imports in Olympia's yarn market. Customers responding to the survey indicated that most of the customers did not purchase imported yarn. The respondents that did import indicated that purchases of imported yarn represented a small percentage of their total purchases of yarn. The consensus among the respondents was that there was no import influence in the market for yarn.

CONCLUSION

After careful review I conclude that all workers at the Tuscaloosa, Ala. plant of Olympia Industries, Inc., are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 22d day of March 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-8860 Filed 4-3-78; 8:45 am]

[4510-28]

[TA-W-2495]

OLYMPIA INDUSTRIES, INC. SPARTANBURG, S.C.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2495: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on October 20, 1977 in response to a worker petition received on October 7, 1977, which was filed on behalf of workers and former workers producing knit fabric at the Spartanburg, S.C. plant of Olympia Industries, Inc.

The notice of investigation was published in the FEDERAL REGISTER on November 11, 1977 (42 FR 57174). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Olympia Industries, Inc., its customers, the National Cotton Council of America, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligiblity to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the act must be met. Without regard to whether any of the other criteria have been met the following criterion has not been met.

That increases of imports of articles like or directly competitve with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threats thereof, and to the absolute decline in sales or production.

Evidence developed during the course of the investigation revealed that the impact of imports in Olympia Industries, Inc.'s market for finished fabric has been small and did not change appreciably from 1975 to 1976 or in the first 9 months of 1977 compared to the first 9 months of 1976.

The ratios of imports to domestic production and consumption increased from 1.6 percent for each in 1975 to 1.8 percent for each in 1976. In each year since 1973 imports of finished fabric have been less than 2 percent of domestic production.

A survey of customers of Olympia Industries, Inc., reflected the minor influence of imports in Olympia's fabric market. Customers responding to the survey indicated that during the period 1975 through the first 9 months of 1977 they either did not

import finished fabric or that purchases of imported fabric represented a small or declining percentage of their total purchases of finished fabric. The consensus among the respondents was that there was no import influence in the market for finished fabric.

CONCLUSION

After careful review, I conclude that all workers producing finished fabric at the Spartanburg, S.C. plant of Olympia Industries, Inc., are denied eligibility to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 24th day of March 1978.

HARRY GRUBERT,
Director, Office of Foreign Economic Research.

[FR Doc. 78-8861 Filed 4-3-78; 8:45 am]

[4510-28]

[TA-W-2413]

OXHIDE AND INSPIRATION DIVISIONS OF INSPIRATION CONSOLIDATED COPPER CO., INSPIRATION, ARIZ.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance.

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2412: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on October 4, 1977 in response to a worker petition received on September 30, 1977 which was filed by the United Steelworkers of America on behalf of workers and former workers producing cement copper at the Oxhide Division of Inspiration Consolidated Copper Co., Inspiration, Ariz.

Subsequent investigation and correspondence with the steelworkers' union lead to the expansion of the investigation to also include the entire Inspiration Division's operations of Inspiration Consolidated Copper Co. Inspiration, Ariz.

The notice of investigation was published in the FEDERAL REGISTER on October 25, 1977 (42 FR 56374). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from Inspiration Consolidated Copper Co., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, The American Metals Market, Metal Bulletin, Metals Week, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the act must be met. It is concluded that all of the requirements have been met.

While imports of refined copper had increased by 161 percent in 1976 compared to 1975 and imports of copper rods had increased by 68 percent over the same period, domestic demand increased at only a fraction of those rates. Inventory levels of domestic and imported copper on consignment at domestic refineries in December 1976 were 31.4 percent above December 1975 levels and were 143.2 percent above December 1974 levels. Inspiration and other domestic producers of refined copper/copper rod lost sales in 1977 because of the excessive inventories of domestic and imported copper.

Imports of copper are affected by the differential between the domestic price of copper established by COMEX (Commodity Metal Exchange) and the price established by the LME (London Metal Exchange). When the LME price drops more than the estimated transportation costs of 5-8 cents per pound below the COMEX price, the demand for imported copper increases. During May and June 1977 the LME price was almost 11 cents per pound below the COMEX price and in July and August 1977 the LME price was almost 12 cents per pound below the COMEX price. At the same time, the abundant supply of copper stocks in the foreseeable future provides no reason for domestic consumers of copper to maintain ties with domestic producers for purposes of a guarantee against copper shortages. Consequently, in the third quarter of 1977, when many domestic copper producers curtailed production because of the depressed market price for copper, imports of refined copper increased 9.9 percent compared to the third quarter of 1976 and for the July through November period of 1977 imports of copper rods increased 470 percent compared to the comparable period of 1976.

Price pressure from imported copper has reduced the ability to profitably mine domestic ore and convert it to copper concentrate or cement copper and hence refined copper and copper rod. Industry sources state that the weighted average production costs of the lowest cost domestic copper mines are 63 cents per pound. The weighted average costs for the highest cost domestic copper mines are $1.05 per pound. Thus, with a current domestic market price of 60 cents per pound, domestic producers lose, on the average, 3 to 45 cents on each pound of refined copper they choose to sell.

Inspiration's decision to layoff workers and terminate production at its Oxhide Division at the end of August 1977 and its subsequent decision to resume operations on a curtailed basis in September of 1977 as well as its decision to layoff workers and reduce production at the Inspiration Division at the end of August 1977 were based mainly on an attempt to minimize losses which the company could not avoid were it to run at normal production levels at the current market prices of copper.

Comments made by customers purchasing copper from Inspiration substantiate the fact that increased imports have contributed to record inventory levels which have driven the price of domestic copper below the level at which many domestic firms can profitably produce copper.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with copper produced at the Oxhide and Inspiration Divisons, Inspiration, Ariz. Facilities of Inspiration Consolidated Copper Co. contributed importantly to the decline in production and to the total or partial separation of workers at those facilities. In accordance with the provisions of the Act, I make the following certification:

All employees at the Oxhide and Inspiration Divisions, Inspiration, Aria. Facilities of Inspiration Consolidated Copper Co. who became totally or partially separated from employment on or after August 26, 1977 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 27th day of March 1978.

HARRY GRUBERT,
Director, Office of Foreign Economic Research.

[FR Doc. 78-8862 Filed 4-3-78; 8:45 am]

[4510-28]

[TA-W-2144]

PRINTS ALMO, INC. BROOKLYN, N.Y.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2144: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on June 13, 1977, in response to a worker petition received on June 9, 1977, which was filed on behalf of workers and former workers producing printed fabric at Prints Almo, Inc., Brooklyn, N.Y.

The Notice of Investigation was published in the FEDERAL REGISTER on

June 24, 1977 (42 FR 32328). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Prints Almo, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met. Without regard to whether any of the other criteria have been met the following criterion has not been met.

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threats thereof, and to the absolute decline in sales or production.

Evidence developed in the Department's investigation revealed that the ratio of imports of finished fabric (dyed and printed) to domestic production was less then 2 percent from 1974 to 1977.

In addition a survey by the Department of major customers of Prints Almo, Inc. revealed that none purchased imported printed fabric.

CONCLUSION

After careful review I conclude that all workers at Prints Almo, Inc., Brooklyn, N.Y., are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 22nd day of March 1978.

JAMES F. TAYLOR,
5Director, Office of Management,
Administration, and Planning.

[FR Doc. 78-8863 Filed 4-3-78; 8:45 am]

[4510-28]

[TA-W-2755]

SKF INDUSTRIES, INC., ALTOONA, PA.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2755: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on December 8, 1977, in response to a worker petition received on November 30, 1977, which was filed on behalf of workers and former workers producing ball bearings at the Altoona, Pa., plant of SKF Industries, Inc.

The notice of investigation was published in the FEDERAL REGISTER on December 30, 1977 (42 FR 65307). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from SKF Industries, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the act must be met. It is concluded that all of the requirements have been met.

United States imports of ball bearings increased from 97 million units in 1975 to 111.9 million units in 1976. In 1977, imports rose to 127.9 million units.

The imports to domestic production ratio for ball bearings decreased from 45.8 percent in 1975 to 45.6 percent in 1976, then increased in 1977 to 49.2 percent.

Imports of ball bearings by the Altoona plant increased absolutely and relative to plant production in 1975, 1976, and 1977. Imports of ball bearings have replaced, in some instances totally, in others partially, production of smaller ball bearings formerly produced at the plant.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with ball bearings produced at the Altoona, Pa., plant of SKF Industries, Inc. contributed importantly to the total or partial separation of the workers of that plant. In accordance with the provisions of the act, I make the following certification:

All workers at the Altoona, Pa. plant of SKF Industries, Inc., who became totally or partially separated from employment on or after November 18, 1976, and before May 1, 1977, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974. All workers separated on or after May 1, 1977, are denied eligibility.

Signed at Washington, D.C., this 24th day of March 1978.

HARRY GRUBERT,
Director, Office of
Foreign Economic Research.

[FR Doc. 78-8864 Filed 4-3-78; 8:45 am]

[4510-28]

[TA-W-2327]

STAFFORD GARMENT MANUFACTURING CO., FALL RIVER, MASS.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of labor herein presents the results of TA-W-2327: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on September 12, 1977, in response to a worker petition received on August 31, 1977, which was filed on behalf of workers and former workers producing women's dresses at Stafford Garment Manufacturing Corp., Fall River, Mass. The investigation revealed that the workers also produce pantsuits.

The notice of investigation was published in the FEDERAL REGISTER on October 4, 1977 (42 FR 54031). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Stafford Garment Manufacturing Corp., its manufacturer, customers of the manufacturer, the U.S. Department of Commerce, the U.S. International Trade Commission, the National Cotton Council of America, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the act must be met. Without regard to whether any of the other criteria have been met the following criterion has not been met.

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threats thereof, and to the absolute decline in sales or production.

The Department's investigation has revealed that Stafford Garment Manufacturing Corp. is a clothing contractor that is engaged in the production of women's dresses and pantsuits.

Imports of women's, misses' and children's suits increased in absolute terms, from 1972 to 1973, increased from 1973 to 1974, and increased from 1974 to 1975. Imports decreased 1 percent from 1975 to 1976 and decreased 16 percent in the first 9 months of 1977 compared to the first 9 months of 1976. The ratios of imports to domestic production and consumption decreased from 12.2 percent and 10.9 percent, respectively, in 1975 to 11.6 percent and 10.4 percent, respectively, in 1976.

Imports of women's, and misses' dresses decreased in absolute terms, from 1972 to 1973, increased from 1973 to 1974, and increased from 1974 to 1975. Imports increased 2 percent from 1975 to 1976 and decreased 13 percent in the first 9 months of 1977 compared to the first 9 months of 1976. The ratios of imports to domestic production and consumption remained at 4.5 percent and 4.3 percent, respectively, in 1975 and 1976.

Stafford worked exclusively for one manufacturer through mid-1977; customers of that manufacturer were surveyed. One customer, decreased purchases from the manufacturer and increased purchases of imported dresses and pantsuits. However, imports accounted for less than one percent of that customer's total purchases. None of the other customers surveyed switched to imports.

CONCLUSION

After careful review I conclude that workers producing women's dresses and pantsuits at Stafford Garment Manufacturing Corp., Fall River, Mass., are denied eligibility to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 22d day of March 1978.

HARRY GRUBERT,
Director, Office of Foreign Economic Research.

[FR Doc. 78-8865 Filed 4-3-78; 8:45 am]

[4510-28]

[TA-W-2595]

STEIN AND KOLTIS ENTERPRISES, INC., NEW YORK, N.Y.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2595: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on November 10, 1977, in response to a worker petition received on November 2, 1977, which was filed on behalf of workers and former workers producing women's shoes at Stein and Koltis Enterprises, Inc., New York, N.Y.

The notice of investigation was published in the FEDERAL REGISTER on November 18, 1977 (42 FR 59565). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Stein and Koltis Enterprises, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the act must be met. It is concluded that all of the requirements have been met.

Imports of women's nonrubber footwear, except athletic, increased annually from 183.5 million pairs in 1975 to 183.8 million pairs in 1976. Imports decreased from 147.6 million pairs in the first nine months of 1976 to 134.4 million pairs in the first nine months of 1977. Imports as a percentage of production increases from 107.9 percent in 1974 to 119.1 percent in 1975 and then declined to 117.9 percent in 1976. Imports as a percentage of production increased from 119.9 percent in the first nine months of 1976 to 124.9 percent in the first nine months of 1977.

Imported shoes have acquired an increasing share of the domestic market. After considering the various factors affecting the domestic footwear industry, the U.S. International Trade Commission concluded that certain footwear are being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic industry producing such articles. A Presidential directive, issued April 16, 1976, ordered that trade adjustment assistance be expedited to impacted workers, firms, and communities.

Customers surveyed of Stein and Koltis who have decreased purchases from the subject firm in 1976 and 1977 have increased purchases from foreign sources.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with women's shoes produced by Stein and Koltis Enterprises, Inc., New York, N.Y. contributed importantly to the decline in sales and to the separation of workers at that firm. In accordance with the provisions of the act, I make the following certification:

All workers at Stein and Koltis Enterprises, Inc., New York, N.Y. who became totally or partially separated from employment on or after October 25, 1976 are elibible to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 27th day of March 1978.

HARRY GRUBERT,
Director, Office of Foreign Economic Research.

[FR Doc. 78-8866 Filed 4-3-78; 8:45 am]

[4510-28]

[TA-W-2078]

THEALINDA KNITTING MILLS, INC., BROOKLYN, N.Y.

Negative Determination on Reconsideration

On February 20, 1978 (43 FR 8205) the Department of Labor granted administrative reconsideration of its original negative determination regarding eligibility to apply for worker adjustment assistance.

The petitioner claimed that the Department erred in denying the petition by evaluating import changes over an inappropriate time frame within the meaning of section 222(3) of the Trade Act of 1974.

In its reconsideration, the Department found that irrespective of whether or not imports are found to have been increasing or decreasing, a determining factor in the denial was that a survey of Thealinda's customers conducted by the Department revealed that they did not switch to imports. Of the customers surveyed, only one purchased imported women's knitwear, and that customer reported that its purchases of imports did not increase in 1976 compared to 1975.

CONCLUSION

After reconsideration, I reaffirm the original denial of eligibility to apply for adjustment assistance to workers and former workers at the Brooklyn, N.Y., plant of Thealinda Knitting Mills, Inc.

Signed at Washington, D.C., this 23rd day of March 1978.

HARRY GRUBERT,
Director, Office of Foreign Economic Research.

[FR Doc. 78-8867 Filed 4-3-78; 8:45 am]

[4510-28]

[TA-W-2724]

TIM SPORTSWEAR CO., INC., NEW BEDFORD, MASS.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2724: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on December 5, 1977, in response to a worker petition received on November 21, 1977, which was filed on behalf of workers and former workers producing sportswear at Tim Sportswear Co., Inc., New Bedford, Mass.

The notice of investigation was published in the FEDERAL REGISTER on December 16, 1977 (42 FR 63487). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Tim Sportswear Co., Inc., its customers, the U.S. Department of Commerce, the National Cotton Council of America, the U.S. International Trade Commission, industry analysis, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility

requirements of section 222 of the Act must be met. Without regard to whether any of the other criteria have been met the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threats thereof, and to the absolute decline in sales or production.

The Department's investigation revealed that the manufacturer who represented a large percentage of orders in 1976 and 1977 experienced increased sales in those years. The manufacturer does not purchase imported finished garments for sale to customers. This manufacturer employs offshore contractors to produce certain garments but the manufacturer's use of these contractors has been declining since 1975.

CONCLUSION

After careful review I conclude that all workers at Tim Sportswear Co., Inc. are denied eligibility to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 22d day of March 1978.

HARRY GRUBERT,
Director, Office of Foreign Economic Research.

[FR Doc. 78-8868 Filed 4-3-78; 8:45 am]

[4510-28]

[TA-W-2589]

WALKER BOARDWAY ASSOCIATES, INC., WISCASSET, MAINE

Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2589: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on November 9, 1977, in response to a worker petition received on November 2, 1977, which was filed on behalf of workers and former workers producing metal fabrications at Walker Boardway Associates, Inc., Wiscasset, Maine.

The Notice of Investigation was published in the FEDERAL REGISTER on November 18, 1977 (42 FR 59565). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Walker Boardway Associates, Inc., the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met.

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threats thereof, and to the absolute decline in sales or production.

The Department's investigation revealed that the ratio of imports to domestic production of fabricated platework remained less than one percent from 1972 through the third quarter of 1977. Imports are negligible because the fabricated platework is built to customer specification and is expensive to ship.

CONCLUSION

After careful review I conclude that all workers at Walker Boardway Associates, Inc. are denied eligibility to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 27th day of March 1978.

HARRY GRUBERT,
Director, Office of Foreign Economic Research.

[FR Doc. 78-8869 Filed 4-3-78; 8:45 am]

[4510-28]

[TA-W-2523]

WELLS-GARDNER ELECTRONICS CORP., CHICAGO, ILL. AND ROCKET MANUFACTURING CO., CHARLESTOWN, IND.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2523: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescibed in section 222 of the Act.

The investigation was initiated on October 27, 1977, in response to a worker petition received on October 25, 1977, which was filed by the International Brotherhood of Electrical Workers on behalf of all workers at the Chicago, Ill., plant of Wells-Gardner Electronics Corp. The investigation was expanded to include Rocket Manufacturing Co., Charlestown, Ind., a division of Wells-Gardner.

The notice of investigation was published in the FEDERAL REGISTER on November 15, 1977 (42 FR 39132). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Wells-Gardner Electronics Corp., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met. It is concluded that all of the requirements have been met.

U.S. imports of color television sets totaled 2,856,300 sets in 1976, more than were imported in any previous year and 179.8 percent higher than in 1975. Imports relative to production rose from 15.5 percent in 1975 to 36.9 percent in 1976. Color television imports of 1,972,800 sets during the first 9 months of 1977 exceeded imports during the same period of 1976 by 2.6 percent.

Under the Orderly Marketing Agreement negotiated between the United States and Japan, imports of color televisions from Japan are limited to 1,750,000 sets in 1977. Through June of 1977, color TV imports from Japan totaled 1,096,600 units, so the rate of importation must decrease. However, since the OMA is a bilateral agreement, it is anticipated that imports of color televisions from other countries will increase.

Customers of Wells-Gardner Electronics Corp. who were surveyed decreased purchases from the subject firm and increased their purchases from foreign sources from 1976 to 1977.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with color television sets produced by Wells-Gardner Electronics Corp., Chicago, Ill., and console cabinets for color television sets produced by Rocket Manufacturing Co., Charlestown, Ind., contributed importantly to the decline in sales and production and to the separation of workers at those firms. In accordance with the provisions of the Act, I make the following certification:

All workers at Wells-Gardner Electronics Corp., Chicago, Ill., who became totally or partially separated from employment on or after October 17, 1976, are eligible to apply for adjustment assistance under title II, chapter 2 of the Trade act of 1974; and all workers at Rocket Manufacturing Co., Charlestown, Ind., who became totally or partially separated from employment on or after October 17, 1976, are eligible to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 27th day of March 1978.

HARRY GRUBERT,
Director, Office of Foreign Economic Research.

[FR Doc. 78-8870 Filed 4-3-78; 8:45 am]

[6820-26]

NATIONAL ARCHIVES AND RECORDS SERVICE

INDEX TO THE MEMBERSHIP OF FEDERAL ADVISORY COMMITTEES LISTED IN THE FIFTH ANNUAL REPORT OF THE PRESIDENT TO THE CONGRESS COVERING CALENDER YEAR 1976

Availability of Microfilm and Publication

This index has been microfilmed and accessioned by the National Archives. It is available for viewing in the reading rooms at the National Archives Building (Washington, D.C.) and the 11 Regional Archives Branches. In addition, copies of the 16mm microfilm may be ordered at a total cost of $12 from the National Archives and Records Service (NEPS), Washington, D.C. 20408, by requesting Microcopy No. A-1199-19. Printed copies of the index are available for sale at $11.75, by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The GPO order numbers are 052-070-04238-9 (stock) and Y4.G74/9:AD9/2/976 (catalog).

Dated: March 23, 1978.

JAMES B. RHOADS,
Archivist of the United States.

[FR Doc. 78-8726 Filed 4-3-78; 8:45 am]

[7590-01]

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-282 and 50-306]

NORTHERN STATES POWER CO.

Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment Nos. 28 and 22 to Facility Operating License Nos. DPR-42 and DPR-60, issued to the Northern States Power Co. (the licensee), which revised Technical Specifications for operation of Unit Nos. 1 and 2 of the Prairie Island Nuclear Generating Plant (the facilities) located in Goodhue County, Minn. The amendments are effective as of their date of issuance.

The amendments revised the Technical Specifications for the facilities to permit a change in negative rate trip setpoints and a change in the intermediate range high flux trip limit.

The applications for the amendments comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of the amendments.

For further details with respect to this action, see (1) the applications for amendments dated August 27, 1976, and January 4, 1977 and supplements dated August 10, 1977 and August 31, 1977, (2) Amendment Nos. 28 and 22 to License No. DPR-42 and DPR-60, respectively, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the Environmental Conservation Library of the Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minn. 55401. A single copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 28th day of March 1978.

For the Nuclear Regulatory Commission.

A. SCHWENCER,
Chief, Operating Reactors Branch No. 1, Division of Operating Reactors.

[FR Doc. 78-8750 Filed 4-3-78; 8:45 am]

[7590-01]

REGULATORY GUIDE

Issuance and Availability

The Nuclear Regulatory Commission has issued three new guides in its Regulatory Guide Series. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations, and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

The new guides are:

Regulatory Guide 5.54—Standard Format and Content of Safeguards Contingency Plans for Nuclear Power Plants
Regulatory Guide 5.55—Standard Format and Content of Safeguards Contingency Plans for Fuel Cycle Facilities
Regulatory Guide 5.56—Standard Format and Content of Safeguards Contingency Plans for Transportation

Regulatory Guide 5.54 identifies and provides a uniform format for the principal information that applicants and licensees should include in the contingency plans required to be submitted in connection with licenses for nuclear power plants and applications therefor.

Regulatory Guide 5.55 identifies and provides a uniform format for the principal information that applicants and licensees should include in the contingency plans required to be submitted in connection with licenses for fuel cycle facilities and applications therefor.

Regulatory Guide 5.56 describes the principal information that applicants and licensees should include in the contingency plans required to be submitted in connection with licenses for transporting certain quantities of special nuclear material and applications therefor.

These documents provide guidance in the preparation of contingency plans required by recently adopted amendments to parts 50, 70, and 73 of the Commission's regulations.

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Public comments on Regulatory Guides 5.54, 5.55, and 5.56 will, however, be particularly useful in evaluating the need for an early revision if received by June 1, 1978.

Comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Requests for single copies of issued guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Attention: Director, Division of Technical Information and Document Control. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commisssion approval is not required to reproduce them.

(5 U.S.C. 552(a).)

Dated at Rockville, Md., this 28th day of March 1978.

For the Nuclear Regulatory Commission.

ROBERT B. MINOGUE,
Director, Office of Standards Development.

[FR Doc. 78-8752 Filed 4-3-78; 8:45 am]

[7590-01]

REVISION TO THE STANDARD REVIEW PLAN

[NUREG-75/087]

Issuance and Availability

As a continuation of the updating program for the Standard Review Plan (SRP) previously announced (FEDERAL REGISTER notice dated December 8, 1977), the Nuclear Regulatory Commission's (NRC's) Office of Nuclear Reactor Regulation has published Revision No. 1 to section NO. 15.4.3 of the SRP for the NRC staff's safety review of applications to build and operate light-water-cooled nuclear power reactors. The purpose of the plan, which is composed of 224 sections, is to improve both the quality and uniformity of the NRC staff's review of applications to build new nuclear power plants, and to make information about regulatory matters widely available, including the improvement of communication and understanding of the staff review process by interested members of the public and the nuclear power industry. The purpose of the updating program is to revise sections of the SRP for which changes in the review plan have been developed since the original issuance in September 1975 to reflect current practice.

Copies of the Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants, which has been identified as NUREG-75/087, are available from the National Technical Information Service, Springfield, Va. 22161. The domestic price is $70, including first-year supplements. Annual subscriptions for supplements alone are $30. Individual sections are available at current prices. The domestic price for Revision No. 1 to Section No. 15.4.3 is $4. Foreign price information is available from NTIS. A copy of the Standard Review Plan including all revisions published to date is available for public inspection at the NRC's Public Document Room at 1717 H Street NW., Washington, D.C. 20555.

(5 U.S.C. 552(a).)

Dated at Bethesda this 23rd day of March 1978.

For the Nuclear Regulatory Commission.

ROGER J. MATTSON,
Director, Division of Systems Safety, Office of Nuclear Reactor Regulation.

[FR Doc. 78-8753 Filed 4-3-78; 8:45 am]

[7590-01]

[NUREG-75/087]

REVISION TO THE STANDARD REVIEW PLAN

Issuance and Availability

As a continuation of the updating program for the Standard Review Plan (SRP) previously announced (FEDERAL REGISTER notice dated December 8, 1977), the Nuclear Regulatory Commission's (NRC's) Office of Nuclear Reactor Regulation has published Revision No. 1 to section No. 4.3 of the SRP for the NRC staff's safety review of applications to build and operate light-water-cooled nuclear power reactors. The purpose of the plan, which is composed of 224 sections, is to improve both the quality and uniformity of the NRC staff's review of applications to build new nuclear power plants, and to make information about regulatory matters widely available, including the improvement of communication and understanding of the staff review process by interested members of the public and the nuclear power industry. The purpose of the updating program is to revise sections of the SRP for which changes in the review plan have been developed since the orignial issuance in September 1975 to reflect current practice.

Copies of the Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants, which has been identified as NUREG-75/087, are available from the National Technical Information Service, Springfield, Va. 22161. The domestic price is $70, including first-year supplements. Annual subscriptions for supplements alone are $30. Individual sections are available at current prices. The domestic price for Revision No. 1 to Section No. 4.3 is $4. Foreign price information is available from NTIS. A copy of the Standard Review Plan including all revisions published to date is available for public inspection at the NRC's Public Document Room at 1717 H Street NW., Washington, D.C. 20555.

(5 U.S.C. 552(a).)

Dated at Bethesda this 23rd day of March, 1978.

For the Nuclear Regulatory Commission.

ROGER J. MATTSON,
Director, Division of Systems Safety, Office of Nuclear Reactor Regulation.

[FR Doc. 78-8754 Filed 4-3-78; 8:45 am]

[7590-01]

[Docket Nos. 50-259, 50-260 and 50-296]

TENNESSEE VALLEY AUTHORITY

Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 36 to Facility Operating License No. DPR-33, Amendment No. 33 to Facility Operating License No. DPR-52 and Amendment No. 10 to Facility Operating License No. DPR-68 issued to Tennessee Valley Authority (the licensee), which revised Technical Specifications for operation of the Brown's Ferry Nuclear Plant, Units Nos. 1, 2, and 3, (the facility) located in Limestone County, Ala. The amendments are effective as of the date of issuance.

These amendments revise the provisions in the Environmental Technical Specifications with respect to reporting requirements on transmission line right-of-way maintenance and fish impingement, clarifies minor administrative details and deletes reference to the internal divisions within TVA responsible for implementation of the Technical Specifications.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact appraisal need not be prepared in connection with issuance of these amendments.

For further details with respect to this action, see (1) the application for amendments dated October 28, 1977, (2) Amendment No. 36 to License No. DPR-33, Amendment No. 33 to License No. DPR-52, and Amendment No. 10 to License No. DPR-68, and (3) the Commission's letter to the licensee dated March 28, 1978. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. and at the Athens Public Library, South and Forrest, Athens, Ala. 35611. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 28th day of March 1978.

For the Nuclear Regulatory Commission.

GEORGE LEAR,
Chief, Operating Reactors Branch No. 3, Division of Operating Reactors.

[FR Doc. 78-8751 Filed 4-3-78; 8:45 am]

[3110-01]

OFFICE OF MANAGEMENT AND BUDGET

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on March 28, 1978 (44 U.S.C. 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number(s), if applicable; the frequency with which the information is proposed to be collected; an indication of who will be the respondents to the proposed collection; the estimated number of responses; the estimated burden in reporting hours; and the name of the reviewer or reviewing division or office.

Requests for extension which appear to raise no significant issues are to be approved after brief notice through this release.

Further information about the items on this daily list may be obtained from the clearance office, Office of Management and Budget, Washington, D.C. 20503, 202-395-4529, or from the reviewer listed.

NEW FORMS

DEPARTMENT OF LABOR

Employment and Training Administration, Impact of Federal Income Security Program on Work Incentives and Family Stability, MT-288, single time, 7560 WIN persons, UC persons, working neighbors, Housing, Veterans and Labor Division, Strasser, A., 395-3532.

Labor Management and Service Administration, Delinquency Questionnaire, LMSA 87T, single time, 10000 pension and welfare plans—No. 1975 annual report on file, Strasser, A., 395-6132.

Employment and Training Administration, Funding of Community Based Organizations, Community Action Agencies, and Special Districts under CETA, ASPER-4, single time, 440 CETA prime sponsor units, Strasser, A. 395-6132.

REVISIONS

PENSION BENEFIT GUARANTY CORPORATION

Annual Premium Filing, PBGC-1, annually, plan administrators of defined benefit pension plans, 120,000 responses, 60,000 hours, Strasser, A., 395-6132.

DEPARTMENT OF AGRICULTURE

Economics, Statistics, and Cooperatives Service-Statistics Prices Paid by Farmers for New Autos and Trucks, semi-annually, auto and truck dealers, 2,000 responses, 830 hours, Clearance Office, Office of Federal Statistical Policy and Standards, 395-3772.

EXTENSIONS

DEPARTMENT OF AGRICULTURE

Extension Service, Evaluation of Food and Nutrition Education program, ES-255, ES-256, semi-annually, 313,000 responses, 49,800 hours, Human Resources Division, 395-3532.

Agricultural Stabilization and Conservation Service, Regulations—Payment Programs for Wool and Mohair, on occasion, Caywood, D. P., 395-3443.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education, National Needs Assessment for Media and Materials for the Handicapped, OE 9059-1, single time, 99,000 responses, 66,000, hours, Laverne V. Collins, 395-3214.

DAVID R. LEUTHOLD,
Budget and Management Officer.

[FR Doc. 78-8965 Filed 4-3-78; 8:45 am]

[3110-01]

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on March 24, 1978 (44 U.S.C. 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number(s), if applicable; the frequency with which the information is proposed to be collected; an indication of who will be the respondents to the proposed collection; the estimated number of responses; the estimated burden in reporting hours; and the name of the reviewer or reviewing division or office.

Requests for extension which appear to raise no significant issues are to be approved after brief notice through this release.

Further information about the items on this daily list may be obtained from the clearance office, Office of Management and Budget, Washington, D.C. 20503, 202-395-4529, or from the reviewer listed.

NEW FORMS

NATIONAL ENDOWMENT FOR THE HUMANITIES

Planning Awards Application Form, single time, 400 N.P. organizations in all States, Territories, and D.C., Lowry, R. L., 395-3772.

ENVIRONMENTAL PROTECTION AGENCY

Generic Description of Data Collection for Sections 301, 304, 306, and 307 of the clean Water Act of 1978, on occasion, 48154 generic, Ellett, C. A., Natural Resources Division, 395-6132.

DEPARTMENT OF COMMERCE

Bureau of Census, Farm Identification Survey, Cover Letter, 78-A30(PR), 78-A30 (PR)-L, single time, 2500 large farms in specified municipios, clearance office, 395-3772.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration, Quality Assurance Retirement Survivors Insurance Review, SSA-3865, single time, 550 RSI beneficiaries residing in the State of Maryland, Human Resources Division, Lowry, R. L., 395-3532.

Office of Education, Vocational Equity Study Sex Stereotyping and Sex Discrimination in Vocational Education, OE-568, single time, 5671 State administrators, LEA staff-teachers, students, Office of Federal Statistical Policy and Standards, Laverne V. Collins, 395-3214.

National Institutes of Health, Psychological Aspects of Breast Cancer, other (see SF-83), 528 normal controls, Office of Federal Statistical Policy and Standards, 673-7959.

DEPARTMENT OF LABOR

Employment and Training Administration, Minnesota Work Equity Project Evaluation, MT-289, other (see SF-83), 17,500 AFDC and GA clients, Housing, Veterans and Labor Division, Strasser, A., 395-3532.

REVISIONS

DEPARTMENT OF LABOR

Bureau of Labor Statistics, Retail Prices Initiation and Collection of Commodities and Services and Food Price, 3400, 3400A, 3400B, 3400C, 3084, 3401, monthly, retail establishments, 157,404 responses, 56,505 hours, Office of Federal Statistical Policy and Standards, 673-7959.

EXTENSIONS

DEPARTMENT OF LABOR

Employment Standards Administration, Notice of Employee's Injury or Death, LS-201, on occasion, 100,000 responses, 50,000 hours, Strasser, A., 395-6132.

DAVID R. LEUTHOLD,
Budget and Management Officer.

[FR Doc. 78-8966 Filed 4-3-78; 8:45 am]

[8010-01]

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 20472; (70-5902)]

ARKANSAS-MISSOURI POWER CO. AND ASSOCIATED NATURAL GAS CO.

Notice of Proposal by Affiliated Public Utility Companies To Transfer Gas Properties and of Related Financings

MARCH 28, 1978.

Notice is hereby given that Arkansas-Missouri Power Co. ("Ark-Mo"), a public utility subsidiary of Middle South Utilities, Inc. ("Middle South"), 405 West Park Street, Blytheville, Ark. 72315, a registered holding company, and Associated Natural Gas Company ("Associated"), a gas utility subsidiary of Ark-Mo, have filed post-effective amendments to their previously amended application-declaration pursuant to sections 6, 7, 9, 10 and 12 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 42, 43, 44, 45 and 50 promulgated thereunder regarding the following proposed transactions. All interested persons are referred to the post-effective amendments, which are summarized below, for a complete statement of the proposals.

By order dated May 5, 1971 (HCAR No. 17116), the Commission approved the acquisition by Middle South of the outstanding common and preferred stock of Ark-Mo. The order was predicated upon a finding that the acquisition would tend towards the economical and efficient development of an integrated electric utility system. Approval was conditional, however, upon Middle South's commitment to dispose of any direct or indirect interest in the gas utility properties of Ark-Mo and its subsidiary, Associated. Beginning in 1973, Middle South solicited bids for the gas properties from interested persons. Several offers were received in 1974, and Middle South conducted negotiations with persons who had responded to the invitation. Ultimately, these negotiations proved unproductive, and Middle South discontinued further discussions in early 1976. Thereafter, Ark-Mo and Associated filed an application in this proceeding detailing a comprehensive plan to reorganize the two companies in order to transfer all of Ark-Mo's gas properties to Associated and to issue and sell, in negotiated private offerings, various securities related to the transfer. The reorganization is a prelude to the eventual disposition, by sale or otherwise, of Associated's stock or assets. An exception from the competitive bidding requirements of Rule 50 was granted to permit Ark-Mo and Associated to negotiate with private institutional investors for the placement of their respective first mortgage bonds. (See HCAR No. 19864, February 1, 1977, and HCAR No. 19872, February 4, 1977.)

Ark-Mo's gas system, which includes a liquefied natural gas facility, is located in northeast Arkansas and southeast Missouri, and is adjacent to Associated's principal gas distribution system. At January 31, 1978, Ark-Mo's gas system had a depreciated book cost of $10,922,531, and, for the twelve months then ended, the company reported gross operating revenues of $62,714,534. Associated had net gas plant of $9,712,789 at January 31, 1978, and reported operating revenues of $13,686,257 for the year then ended. On a pro forma basis, giving effect to the consolidation of the two gas systems as of January 31, 1978, Associated would have net gas plant of $20,635,320.

Ark-Mo proposes to sell to Associated all of its gas utility facilities, together with related assets and liabilities incident to the conduct of Ark-Mo's gas business, for cash in the amount of the depreciated book cost thereof as of the date of closing ("Closing Date"), with appropriate adjustments thereto in respect of the related assets and liabilities being transferred on that date (representing a net credit against the purchase price of $833,932 as of January 31, 1978). To finance the purchase price, to enable it to retire $2,750,000 in short-term debt and to provide it with additional working capital, Associated proposes to issue and sell up to $7,000,000 in first mortgage bonds, a $4,000,000 subordinated note, and $2,800,000 of additional common stock.

Associated proposes to sell its first mortgage bonds, 9⅜ percent Series B due March 1, 1993 ("Series B Bonds") at par to two institutional investors selected from approximately 43 potential purchasers from whom Kidder, Peabody & Co., Inc. ("Kidder"), acting as Associated's investment advisor, solicited proposals. The Series B Bonds will be dated as of the Closing Date, bear interest at the rate of 9⅜ percent per annum, payable semi-annually, and be issued under an Indenture of Mortgage and Deed of Trust ("Mortgage"), dated March 1, 1978, between Associated and Commerce Bank of Kansas City, Mo., as Trustee. Associated's Mortgage provides, among other things, for redemption of an aggregate of $5,110,000 in principal amount of Series B bonds, plus accrued interest, through the operation of an annual cash sinking fund, commencing on March 1, 1979; for optional prepayment on or after March 1, 1985, at a premium of 104.69 percent of the principal amount of the Series B Bonds, and declining thereafter, plus accrued interest, and for special prepayment of all of the Series B Bonds, at a premium of 104.687 percent of the principal amount thereof if redeemed during the period ending February 28, 1979, and declining thereafter, plus accrued interest, in the event of the sale of all or substantially all of the assets of Associated.

To finance the balance of the purchase price, Associated proposes to issue to Ark-Mo a $4,000,000 subordinated note and 102,580 additional shares of common stock for a cash consideration of $2,800,000. The subordinated note will be dated the Closing Date, mature March 15, 1993, and bear interest at a rate of 7½ percent per annum, payable semi-annually. Associated may not redeem or retire the subordinated note prior to maturity unless, prior thereto, Associated shall have paid in full all principal, premium (if any) and interest on the Series B Bonds; provided, however, that the subordinated note may be prepaid in connection with the sale by Associated of all or substantially all of its assets or the sale by Ark-Mo of Associated's common stock if, in each case, the holders of the Series B Bonds are given the option of requiring redemption of the Series B Bonds at the applicable special redemption price.

In addition to the Series B Bonds proposed to be sold, Associated proposes to issue in exchange for and cancellation of $896,000 in principal amount of first mortgage bonds, 5⅜ percent due 1982, now outstanding, an identical amount of first mortgage bonds, 5⅜ percent Series A due December 1, 1982 ("Series A Bonds"). The Series A Bonds will be issued under and be secured by the Associated Mortgage and bear the same interest rate and be subject to the same redemption provisions applicable to the presently outstanding first mortgage bonds.

To provide funds for the purchase of Associated's common stock and subordinated note and to enable it to retire short-term borrowings outstanding on the Closing Date, presently estimated to aggregate $12,750,000 in principal amount, Ark-Mo proposes to sell up to $10,000,000 in principal amount of its first mortgage bonds, 8¾ percent Series J due March 1, 1998 ("Series J Bonds") at par to six insurance companies selected from among 42 institutional investors from whom Kidder, acting as Ark-Mo's investment advisor, solicited proposals. The Series J Bonds will be dated as of the Closing Date, bear interest at a rate of 8¾ percent per annum, payable semi-annually, and be issued under a proposed tenth supplemental indenture ("Supplemental Indenture") dated March 1, 1978, to an indenture dated December 1, 1944, between Ark-Mo's predecessor and Continental Illinois National Bank and Trust Co. of Chicago, Ill., et al., Trustees. The Supplemental Indenture provides, among other things,

for redemption of $200,000 in principal amount of the Series J Bonds for the calendar year 1979 and each year thereafter through the operation of an annual cash sinking fund, and for optional redemption, in whole or in part, at any time, at a premium of 108.75 percent of the principal amount of the Series J Bonds if redeemed during the year ended February 28, 1979, and declining thereafter, plus accrued interest; provided, however, that Ark-Mo may not so redeem the Series J bonds prior to March 1, 1988, with funds borrowed at an effective interest cost to Ark-Mo of less that 8¾ percent per annum.

It is stated that the fees of Kidder to be paid by Associated and Ark-Mo upon consummation of the sale of the Series B and J Bonds are $35,000 and $50,000, respectively, and that a statement of other fees, commissions and expenses incurred or to be incurred by the companies will be supplied by further post-effective amendment to this application-declaration. It is further stated that the Arkansas Public Service Commission and the Public Service Commission of Missouri have jurisdiction over all of the transactions proposed herein, and that the Federal Energy Regulatory Commission has jurisdiction under the Natural Gas Act over the proposed sale by Ark-Mo to Associated, and the proposed acquisition by Associated from Ark-Mo, of those natural gas facilities constituting part of the Ark-Mo gas system used for the transportation of natural gas in interstate commerce. Applications to and orders issued by those commissions will also be supplied by post-effective amendment.

Notice is further given that any interested person may, not later than April 20, 1978, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the post-effective amendments which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the post-effective amendments, as filed or as they may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

SHIRLEY E. HOLLIS,
Assistant Secretary.

[FR Doc. 78-8711 Filed 4-3-78 8:45 am]

[8010-01]

[Rel. No. 14606]

BUNKER RAMO; GTE INFORMATION SYSTEMS INC.

Order Granting a Temporary Stay of Action by the Options Price Reporting Authority To Limit Access to Services

MARCH 24, 1978.

For a stay of a limitation of access to services provided by a Registered Securities Information Processor.

By letter dated March 17, 1978, Bunker Ramo requested that the Commission "act to stay" and action by the Options Price Reporting Authority ("OPRA") to discontinue a service by which OPRA retransmits last sale reports of options transactions to vendors which receive options last sale reports from OPRA.[1] By letter dated March 23, 1978,[2] GTE Information Systems Inc. ("GTE") also requests that OPRA be stayed from discontinuing the retransmission service. GTE also requests that OPRA be stayed from terminating its provision to GTE of a communications circuit from the Securities Industry Automation Corporation ("SIAC") to GTE. Bunker Ramo and GTE are both vendors of services which, for purposes of the instant matter, provide information concerning options last sale transaction reports to the financial community.

OPRA is a designated committee comprised of representatives of the American Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the Pacific Stock Exchange Inc., the Philadelphia Stock Exchange, Inc., and the Midwest Stock Exchange, Inc. All actions taken by the above exchanges for purposes of implementing and administering the Plan for Reporting of Options Last Sale Price Information[3] are taken in the name of OPRA, through which the exchanges administer the Plan, including prescribing the forms and contracts to be entered into with vendors and subscribers and determining the level of fees to be paid by subscribers.[4] OPRA utilizes SIAC as the exclusive physical processor of the options information which is disseminated by OPRA on behalf of the participant exchanges. As a result of its role in administering and coordinating the dissemination of options price information, OPRA is an exclusive securities information processor registered with the Commission under section 11A(b) of the Securities Exchange Act of 1934 (the "Act").

Shortly after its formation, OPRA entered into identical agreements with various vendors of securities information, including GTE and Bunker Ramo, providing for the transmission of options last sale reports and other information from each of OPRA's participant exchanges to the vendors. Under these agreements, last sale reports were furnished to vendors without charge, and OPRA agreed to assume each vendor's line costs within a 100-mile radius of New York City.[5] These agreements were terminable by either party upon 30 days' written notice.

In late 1976, OPRA decided to develop the capability for a single consolidated high speed transmission of options last sale reports from a central processor to each vendor. OPRA has stated that this decision was made in order to limit the number and standardize the format of inputs that vendors must process, to assure common and accurate time sequencing of reports disseminated to all vendors, and to provide the expanded capability needed to process the increasing volume of options transactions in a timely manner.[6] For this purpose, OPRA, on the basis of competitive bids, selected SIAC to develop the necessary data processing system and to serve as OPRA's exclusive processor. At the same time, OPRA determined that the costs of the central processor in operating the system would be passed on to vendors, news services and others having access to the high speed transmission, in the form of an access charge, and that OPRA would

---

[1] Letter from Murray Sumner of the Bunker Ramo Information Systems Division to Sheldon Rappaport, Deputy Director of the Division of Market Regulation.

[2] Letter from Allen R. Frischkorn, Jr., Attorney for GTE to George A. Fitzsimmons, Secretary.

[3] This plan was declared effective by the Commission pursuant to Rule 9b-1 under the Securities Exchange Act of 1934 and is now incorporated in the Form SIP registration statement filed by OPRA as an exclusive securities information processor pursuant to Rule 11Ab2-1 under that Act.

[4] Plan for Reporting of Options Last Sale Price Information, Article II(b).

[5] It is pursuant to this agreement that OPRA has continued to this date to pay for the communications circuit by which information from OPRA's designated processor is transmitted to GTE.

[6] Letter dated February 2, 1978 from Michael L. Meyer of Schiff Hardin & Waite, counsel to OPRA, to Roger Blanc, Chief Counsel of the Division of Market Regulation.

no longer pay the vendors' line costs from the central processor to each vendor.[7]

To implement these and other changes in the vendor agreements, OPRA met with vendors during the fall of 1977 for the purpose of notifying each vendor that the existing agreements would be terminated in accordance with their terms, and, in September, 1977, OPRA sent a proposed draft of a new vendor agreement to each vendor. After making certain changes in response to comments received from the vendors, OPRA submitted a revised agreement to each of the vendors for execution.[8] The revised agreement provides, inter alia, that each vendor shall be responsible for its own line cost to SIAC and that each vendor shall pay an access charge, presently set at $500 per month, representing the amount which OPRA has calculated is each vendor's proportionate share of the costs of operating the high speed consolidated reporting system.

By letter dated November 10, 1977, OPRA notified each vendor that the then existing vendor agreement would be terminated as of the date upon which the new consolidated high speed line would become available at SIAC, which date was more than 30 days after the date of the letter.[9]

In a letter dated December 15, 1977, GTE requested that the Commission stay, pursuant to section 11A(b)(5)(A) of the Act, the proposed termination of the May 22, 1975 OPRA-vendor agreement ("1975 Agreement") and "inform OPRA that it may not impose access or other new charges on the vendors."[10] Bunker Ramo made a similar request by a letter dated December 22, 1977. Although the 1975 Agreement was terminated by OPRA, OPRA did not discontinue supplying options last sale information to those vendors which did not sign the proposed vendor agreement.[11] By letter dated December 22, 1977 to GTE, OPRA stated that "in order that GTE may continue to receive options last sale information from OPRA over the consolidated high speed line, it is agreed that such information received by you will be handled in accordance with the terms and conditions of the 1975 Agreement, provided that in the event a revised Vendor Agreement is executed by you, it shall be effective retroactively as of the date of the commencement of the high speed SIAC transmission." GTE agreed to this interim solution.[12]

Since any action by the Commission prior to the end of the negotiations may have been rendered moot by an amicable settlement between the parties, the requests for Commission action have been held in abeyance pending the outcome of the contractual negotiations between OPRA and the two vendors. OPRA has confirmed to the Commission that it would "continue to provide options transactions data to GTE and Bunker Ramo on an interim basis during the period of negotiations."[13]

The current requests by Bunker Ramo and GTE for a stay of OPRA's action center on whether the retransmission of data previously transmitted by SIAC is a separate service[14] from the initial transmission of that data. If retransmission is not considered to be a separate service, the terms upon which retransmission capability is provided would appear to be subject to OPRA's representation that it would continue to provide options last sale reports while OPRA negotiates a new vendor agreement with Bunker Ramo and GTE. OPRA asserts that retransmission is an "additional feature, not previously available" and that provision of "this new feature entails additional costs" for OPRA.[15] OPRA also states that other vendors have agreed to pay for the retransmission feature through the access charge, although we note that this access charge is a charge levied upon such vendors for both the initial transmission and retransmission services as a package.

Bunker Ramo and GTE contend that the "retransmission capability is an intergral part of the high speed data transmission facility and is provided expressly to enhance the reporting and dissemination of options last sale reports."[16] Bunker Ramo also notes that "the discontinuance of this service jeopardizes the integrity of the data disseminated to subscribers in that reports which cannot be retrieved because of this action may involve as few as one report or as many reports as can be made over an extended and unlimited time period, clearly numbering in the thousands of reports." Finally, Bunker Ramo notes in its letter that "in connection with each of the Consolidated Transaction Reporting system, the New York Stock Exchange's high speed quotations lines, and OPRA, the retransmission capability is incorporated and recognized by all responsible parties as the mechanism which permits vendors and others to maintain accuracy of the data contents."[17]

GTE also states in its letter of March 23, 1978 that it "has been informally advised by OPRA of OPRA's intention to discontinue, on April 1, 1978, the communications circuit between the central processor and GTE." GTE, in addition to requesting a stay of the termination of the retransmission feature, requests that the Commission stay termination of this communications circuit. Bunker Ramo has limited its request for a stay to the discontinuance of the retransmission service for last sale reports.

Commission Determinations

The Commission's registration of OPRA as an exclusive securities information processor was based upon its finding that OPRA had the capacity to be able to assure the prompt, accurate, and reliable performance of its

[7] Each exchange would, however, continue to collect transaction reports and transmit them to the processor at its own expense.

[8] Letters dated November 10, 1977 from OPRA to GTE and Bunker Ramo. Those letters reflect changes in the proposed agreement from earlier draft versions of the agreement.

[9] This notification was given by OPRA pursuant to Section 16 of the prior vendor agreement. The high speed line became operational on February 8, 1978.

[10] Letter dated December 15, 1977, from Allen Frischkorn, counsel for GTE, to George A. Fitzsimmons.

[11] Bunker Ramo agreed to handle information in accordance with the 1975 Agreement, but did not agree that any revised vendor agreement entered into by it would be effective retroactively. Rather that question was itself left for future negotiation between Bunker Ramo and OPRA.

[12] Letter dated December 30, 1977 from Allen R. Frischkorn, Counsel for GTE to Roger Blanc, Chief Counsel of the Division of Market Regulation.

[13] Letter dated February 2, 1978 at 10 from Michael L. Meyer of Schiff Hardin & Waite, Counsel to OPRA, to Roger Blanc, Chief Counsel of the Division of Market Regulation. We understand that Bunker Ramo and GTE are the only parties which have not entered into a new vendor agreement with OPRA.

[14] The retransmission feature enables a vendor which receives information via the high-speed line to identify and recapture messages which have been lost or garbled in the original transmission from SIAC. Thus, when a vendor's own software detects the fact that messages have been lost in transmission, either through interference on the communications circuit, or a breakdown of SIAC's or the vendor's computer or transmission facilities, the vendor telephones or teletypes SIAC and requests retransmission of the lost data. SIAC then retrieves that data, identifies it as a retransmission, and retransmits the message to all vendors. (All options information transmitted by SIAC on behalf of OPRA is broadcast to all vendor recipients, thus the retransmission identifier is necessary to alert vendors which received the initial transmission that the identified information would be duplicating the initial transmission.)

[15] Letters from Jospeph Corrigan, OPRA Administrator, to Bunker Ramo and GTE dated March 10, 1978.

[16] Bunker Ram letter dated March 17, 1978 at 2. An assertion to the same effect is made by GTE in its letter dated March 23, 1978 at 2.

[17] Bunker Ramo letter dated March 17, 1978 at 2. GTE concurs in its letter dated March 23, 1978 by noting that "a transmission feature is a standard feature of high speed transmissions and cannot be practicably separated from such services."

functions as a securities information processor, comply with the provisions of the Act and the rules and regulations thereunder, carry out its functions in a manner consistent with the purposes of Section 11A(b) of the Act, and operate fairly and efficiently. The Commission made such findings and granted OPRA's registration by order dated January 22, 1976.[18] Section 11A(b)(5)(A) provides the Commission with authority on its own motion, or upon application by an aggrieved person, to review any prohibition or limitation of access to services provided by a registered securities information processor.[19]

Pursuant to section 11A(b)(5)(A) of the Act, the Commission may summarily, or after notice and opportunity for hearing, stay a prohibition or limitation in respect of access to services offered by a registered securities information processor. The express language of section 11A(b)(5)(A) confers broad discretion upon the Commission to issue a stay for the purpose of preserving the status quo between the securities information processor and the aggrieved party until the Commission has the opportunity to decide the merits of the dispute between these parties.

The Commission has determined that a stay is appropriate to preserve the status quo between GTE and Bunker Ramo and OPRA. As discussed above, the Commission registered OPRA on the basis that its rules and regulations, as set forth in the Plan for Reporting of Option Last Sale Information and filed with the Commission in Form SIP, were consistent with the purposes of the Act, and, in particular, the standards set forth in section 11A(b). GTE and Bunker Ramo have raised serious questions about whether OPRA is continuing to operate in a manner consistent with the standards of section 11A(b)—in particular, whether OPRA is acting unfairly and unreasonably in proposing to deny GTE and Bunker Ramo access to its retransmission service. We believe that the questions of whether the retransmission service currently provided to GTE and Bunker Ramo is being terminated fairly merit careful attention by the Commission, and that the status quo should be maintained until the Commission has the opportunity to consider the views of all interested parties.

While the Commission has broad discretion to grant or deny a stay under the express language in section 11A(b)(5)(A) of the Act, the Commission also has determined that the traditional criteria for an equitable stay are met in this instance. In deciding whether or not to issue stays, courts have traditionally applied four criteria: [20]

1. Has the petitioner shown that without a stay, it will be irreparably injured?
2. Would the issuance of a stay be likely to serve the public interest?
3. Would the issuance of a stay substantially harm other parties interested in the proceedings?
4. Has the petitioner made a strong showing that it is likely to prevail on the merits of its applications.

The Commission has determined upon an initial review of the facts alleged that there is a substantial likelihood of irreparable injury to petitioners Bunker Ramo and GTE if OPRA is permitted to terminate the retransmission service. Petitioners would be unable to continue in "good faith" to provide their customers with securities information in that, without their ability to obtain last sale information which may be lost during initial transmissions, petitioners would be unable to maintain an accurate data base and would be unable to provide their customers with a reliable information retrieval system. In addition, petitioners would be severely disadvantaged in competing with other vendors of securities information which provide options last sale reports and which receive the retransmission service.[21] Thus, petitioners could be forced out of this line of business during the pendency of contractual negotiations, an injury which cannot be adequately compensated should the petitioners ultimately decide to bring a civil action against OPRA for damages, because the long term effect—the damage to petitioners' reputation in the financial community as vendors of reliable securities information—cannot be adequately measured. Further, because OPRA is the exclusive processor of the information which Bunker Ramo and GTE require, there is no alternative source other than retransmission of lost data which would enable petitioners to complete and maintain an accurate data base.

We have also determined that the proposed discontinuance of the retransmission service poses a particular danger of irreparable injury to public investors and members of the securities industry who utilize GTE or Bunker Ramo as a source of options last sale reports.[22] This danger would arise if Bunker Ramo and GTE continue to provide their options last sale report service, since the information which they would be distributing to the public would not in all cases represent accurate last sale options price information. We believe such a situation would be untenable in light of the public necessity for accurate and reliable transaction information concerning options securities [23] and note that the deliberate or known dissemination of inaccurate information, by either vendor or their customers, could involve postential violations of the Federal securities laws. The dilemma which GTE and Bunker Ramo face in being unable to provide accurate information is underscored by the fact that OPRA, in its termination notice, has not proposed any fee or charge which Bunker Ramo or GTE could pay solely for the retransmission service as a service segregable from the initial transmission service.

The legislative history of Section 11A(a) emphasizes Congress' concern in this regard:

"In the securities markets, as in most other active markets, it is critical for those who trade to have access to accurate, up-to-the second information as to the prices at which transactions in particular securities are taking place (i.e., last sale reports) and prices at which other traders have expressed their willingness to buy or sell (i.e.,

[18] Securities Exchange Act Release No. 34-12035; 41 FR 4372 (January 29, 1976).

[19] Section 11A(b)(5)(A) provides that "[a]ny prohibition or limitation on access to services with respect to which a registered securities information processor is required by this paragraph to file notice shall be subject to review by the Commission on its own motion, or upon application by any person aggrieved thereby filed within thirty days after such notice has been filed with the Commission and received by such aggrieved person, or within such longer period as the Commission may determine."

[20] *Virginia Petroleum Jobbers Ass'n.* v. *FPC*, 259 F. 2d 921, 925 (1958).

[21] Our concern as to the fairness of OPRA's action in proposing to terminate the retransmission service is accentuated by the fact that all other vendors which have executed a revised Vendor's Agreement with OPRA apparently receive the retransmission service as part of an overall package which includes both the initial transmission and retransmission. Thus, while OPRA contends that retransmission is a new service which was not previously offered, it appears that retransmission was not necessary previously when low speed transmission was utilized by OPRA and was adopted not as a segregable new service, but as a service which is a necessary adjunct to high speed transmission.

[22] We recognize that investors and broker-dealers may choose to utilize other vendors which have the retransmission capability, but it is not apparent that current subscribers of GTE or Bunker Ramo could make alternative arrangements on short notice, in which case they temporarily would be without accurate options last rule reports.

[23] The importance of publicly available information concerning quotations and transactions in securities is recognized by Section 11A(a)(1)(C)(iii) of the Act which states that "[i]t is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure—(iii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities."

quotations). For this reason, communications systems designed to provide automated dissemination of last sale and quotation information with respect to securities will form the heart of the national market system." *Report of the Senate Comm. on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75,* 94th Cong. 1st Sess. 9 (1975).

It currently appears to the Commission that a stay in this instance would do no more than preserve the status quo with respect to the current negotiating posture of OPRA vis a vis petitioners Bunker Ramo and GTE. A stay of OPRA's proposed discontinuance of its retransmission service would, in light of the pending negotiations, merely plance Bunker Ramo and GTE in the same position as other vendors which are currently receiving options last sale price reports information from OPRA. That is, they would continue to receive both the initial transmission of such data and the retransmission of lost date for which other vendors are paying a single access fee; the fee which OPRA is currently negotiating with Bunker Ramo and GTE.[24] The services which Bunker Ramo and GTE will receive for the eventual negotiated fees will thus be equivalent to the services which they have agreed to pay OPRA. Thus, OPRA, through its conclusion of negotiations with the two vendors, will be in the same position it would have been in if it discontinued the retransmission service as proposed.

Finally, the Commission believes that petitioners have made a sufficient showing, for the limited purpose of whether or not a stay should be issued, as to the probability of prevailing on the merits of their applications. In deciding whether petitioners have made a sufficient showing on this fourth criterion, recent cases have not attempted to calculate the mathematical probability that petitioners will prevail on the merits. Rather, the courts have directed that a consideration of this fourth criterion "should be based on whether maintaining the 'status quo' is appropriate when a serious legal question is presented when little if any harm will befall other interested persons or the public and when denial of the order would inflict the irreparable injury on the movant." [25] We believe that GTE and Bunker Ramo have presented a serious legal question as to whether OPRA's prohibition or limitation of access to the retransmission service offered by it is consistent with the provisions of the Act which apply to registered securities information processors. As discussed above, we further believe that serious harm would not befall OPRA as a result of a stay, and that a denial of a stay would not be in the public interest and would be likely to inflict irreparable harm on GTE and Bunker Ramo.

On the basis of the above, the Commission has determined, pursuant to its authority under section 11A(b)(5)(A) of the Act, that OPRA should hereby be stayed temporarily from discontinuing the service by which it currently permits GTE and Bunker Ramo to receive retransmissions of options last sale report information which previously has been transmitted to those parties. This stay order shall be effective for a period of 45 days or, with respect to either Bunker Ramo or GTE, until such party successfully negotiates a revised vendor agreement with OPRA, whichever shall occur earlier. During the pendency of this stay order, the Commission requests, as set forth below, that OPRA, GTE and Bunker Ramo submit written affidavits addressing whether this temporary stay should be made permanent.

With respect to GTE's request for a stay of OPRA's proposed termination of its communications circuit between SIAC (OPRA's central processor) and GTE, we do not believe that a stay of the proposed termination would be appropriate at this time. GTE states in its letter of March 23, 1978 that it has been "informally advised" of OPRA's intention to discontinue the communications circuit.[26] Until such time as GTE receives notice that OPRA will terminate this communications circuit, we believe it would be premature for us to consider staying an action which the potential aggrieved party has not established in fact will occur. Further, it is not apparent to us that the termination of this circuit presents any danger of irreparable harm to GTE or jeopardizes the public interest in the availability of accurate and reliable options last sale reports. GTE states that it currently has a back-up circuit between it and SIAC and we understand that such circuit could be utilized to receive transmissions from SIAC should the circuit which is "provided" by OPRA be discontinued.[27] If GTE believes that such termination, should it occur, is inconsistent with the requirements of the Act which govern the operation of registered securities information processors, it would be able to bring an action for any damages which it may incur as a result of such termination in the absence of a stay. As discussed above, the Commission has before it GTE's initial request for a stay of the termination of the 1975 Vendors Agreement, pursuant to which OPRA had been paying for communications circuits to vendors located within 100 miles of New York City. We understand that the only question which must be resolved between GTE and OPRA concerning provision of the subject communications circuit in the context of that initial request for a stay is whether OPRA is obligated to continue paying for such circuits. Accordingly, the only damage which we believe GTE may suffer from the discontinuation of the circuit currently paid for by OPRA would be the assumption of such payments by GTE itself.

PROCEEDINGS

The Commission invites OPRA, GTE, Bunker Ramo and any interested persons to address the following issues, which it believes may assist it in determining whether the temporary stay shall be made permanent.

1. Whether the retransmission service is inherent in, or necessary to, the accurate, reliable and efficient operation of a high-speed communications system?

2. Whether OPRA may charge a separate fee for the retransmission service during the pendency of negotiations with GTE and Bunker Ramo concerning a revised vendor agreement and, if so, the amount of, and basis for, such fee?

3. Whether, in light of the apparent lack of progress in OPRA's negotiations with these vendors, the Commission should expedite its review of GTE's and Bunker Ramo's initial request for a stay of the termination of OPRA's 1975 Vendors Agreement?

Procedures to be followed in connection with this review proceeding under section 11A(5)(A) of the Act will be governed by the Commission's Rules of Practice, 17 CFR Part 201, effecting adjudications not required to be conducted on the record pursuant to the provisions of the Administrative Procedure Act, 5 U.S.C. 551 et seq.

Accordingly, the Commission hereby requests that interested persons submit written affidavits which pre-

[24] As noted above, both Bunker Ramo and GTE initially requested that the Commission stay OPRA's decision to terminate the 1975 Vendors Agreement. The Commission has not yet considered Bunker Ramo's and GTE's request for a stay because OPRA has represented that it would continue to provide options last sale reports to both vendors while it continues to negotiate with those vendors concerning the level of fees, if any, to be paid by those vendors for receipt from OPRA of options last sale reports. See note 13, supra.

[25] *Washington Metropolitan Area Transit Commission* v. *Holiday Tours, Inc.*, 559 F. 2d 841 (1977).

[26] Letter from GTE to George A. Fitzsimmons at 3.

[27] We understand that the Communications circuit which is the subject of this dispute is provided on a contractual basis by a common carrier, and that in speaking of its provision by OPRA, it should be understood that the current contracting party for the circuit is OPRA, which pays for the circuit. We further understand that GTE may assume OPRA's contractual responsibilities with respect to this communications circuit with no interruption of service.

sent their data, views and arguments addressing the above issues and any other issues which may be considered relevant to resolution of the issue of whether this stay should be made permanent. The Commission will also give due consideration to any written requests for an oral hearing in connection with the issues raised above.

An original and fifteen copies of your written statements should be submitted to the Secretary of the Commission on or before Friday, April 7, 1978, and copies should be served upon each other at that time. The Commission also invites other interested persons to submit written data and views on the questions raised herein. All submissions received will be placed in File No. 4-280, and will be available for public inspection at the Commission's Public Reference Room, 1100 L Street NW., Washington, D.C.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-8712 Filed 4-3-78; 8:45 am]

[8010-01]

[Rel. No. 20466; (70-4668)]

CENTRAL & SOUTH WEST SERVICES, INC.

Proposed Modifications to Service Company Authorization and of Change in Cost Allocation Method

MARCH 24, 1978.

Notice is hereby given that Central & South West Services, Inc. ("CSWS"), One Main Place, Suite 2700, Dallas, Tex. 75250, a subsidiary service company of Central & South West Corp. ("CSW"), a registered holding company, has filed post-effective amendments to its application-declaration previously filed in this proceeding pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating sections 12(f) and 13 of the Act and rules 86, 87, 90, and 91 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the application-declaration, as now further amended by said post-effective amendments, which is summarized below, for a complete statement of the proposed transactions.

The establishment of CSWS (originally CSR Services, Inc.) was authorized by Commission order dated March 20, 1969 (HCAR No. 16317). CSWS provides a variety of management, administrative, engineering, financial, support, and coordination services for CSW and its subsidiary operating companies (collectively, the "CSW system"). CSWS now seeks to modify the authorizations previously ordered, specifically requesting authorization: (i) For the establishment and operation of a CSW system corporate data center (the "center"), and (ii) for a change in cost allocation method established by the 1969 order, including a method for services provided by the center.

CSWS proposes to establish and operate the center at cost, determined in accordance with section 13 of the Act and the applicable rules thereunder, in order to provide companies of the CSW system with electronic data processing services, including processing of customer billing, revenues, and statistics, payrolls, property accounting, general accounting, cash forecasts, load flow studies, plus other business and engineering application. These functions are currently performed separately by each of the companies of the CSW system on their existing equipment, with the exception of WTU, which purchases data processing services from PSO under authority of the Commission's order dated November 2, 1977 (HCAR No. 20241).

It is stated that these computing facilities will not directly control the dispatch of electric power or energy; however, study and evaluation of various dispatching patterns and alternatives will be made on these facilities. Companies of the CSW system would continue to operate and own or lease limited data processing facilities in order to permit them to perform keypunching, printing, and similar functions, to maintain, revise, and update certain data bases and programs, and to make remote use of the center's facilities. Services which PSO provides WTU would be performed instead by the center.

It is stated that the advisability of establishing such a center was based upon a study conducted by CSWS which considered existing and proposed hardware, system software, applications development, communications, personnel, and other costs in view of the anticipated needs of the companies of the CSW system and technical and cost developments in the electronic data processing field. Based upon this study, CSWS states that it expects that the center will involve installation and start-up costs of approximately $713,000 and annual operating costs of approximately $1,329,621. The annual operating costs would include site rental, hardware for both the center and for companies in the CSW system, personnel, systems software, and communications. Existing equipment would be retained and not involve additional costs. The cost of new data input or output equipment located at any operating subsidiary and communications between that subsidiary and the center would be borne by the subsidiary and not by CSWS. Operation of the center would reduce certain existing hardware, software, personnel, and communication costs by approximately $1,245.795 annually. It is stated that as a result, the proposed arrangement would involve a net increase of $83,826 in annual expenditures by the CSW system. CSWS believes these additional costs to be justified in view of anticipated increases in the CSW system's data processing requirements and general economic and technical developments in the data processing field. CSWS estimates that the CSW system is equipped for 26 percent growth in data processing capability, while the center would ultimately provide for 286 percent growth. CSWS anticipates that the development costs for new information systems over the next 5 to 10 years will exceed $5,000,000. The center will enable the CSW system to incur this expenditure once, rather than separately, for each component company of the CSW system.

CSWS states that establishment of the center is scheduled for the fall of 1978, when either an interim IBM 158 system or a permanent system from another supplier will be installed and operational. In order to compute the cost of services to be provided to and billed to each company of the CSW system, CSWS has identified the sources of its overall costs in connection with establishment and operation of the center. These sources include: (a) Personnel; (b) rentals of software, services, and hardware; (c) prices for purchased hardware; (d) communications; (e) site rental; and (f) general supplies. These sources are combined in varying proportions in each of the services which CSWS would provide for each company of the CSW system and each service will be analyzed to determine its cost components and their relative significance. Because of the variety of units in which these services are measured, the computer resource unit ("CRU") will be designated as a dimensionless measurement to relate all services on a single scale, much as PSO has done with regard to data processing services it currently provides to WTU. The services which combine in a given job would be measured in CRU's and each CRU would be assigned a dollar value. The CRU will be based upon budgeted costs, and billings to companies of the CSW system will be adjusted retroactively on the basis of actual costs. CSWS's billings to companies of the CSW system will thus reflect the relative cost components of each service provided while measuring all services on a common basis and ensuring that each company of the CSW system will pay only the costs of the services provided it by CSWS.

CSWS states that Commission's 1969 order herein provided that it's costs would be allocated 40 percent to CSW, 20 percent to CPL, 17 percent to PSO, 15 percent to SWEPCO, and 8 percent to WTU. CSWS further states that be-

cause of the growth in volume of the services provided by it to the CSW system companies, the use of any general fixed percentage seems unduly inflexible and unrelated to the actual benefits conferred by CSWS. CSW therefore proposes that the costs of CSWS incurred be billed on the following basis. CSW proposes that identifiable, direct costs be billed directly to the company or companies benefitted thereby in proportion to their degree of participation. All costs (other than planning and engineering costs and costs relating to the provisions of employee benefits) which could not be directly allocated would be allocated 20 percent to CSW and 80 percent to the operating companies in accordance with a formula which relects, on an equal weighting basis, for the most recent calendar year, each company's: (a) Peak load, as defined; (b) average number of ultimate customers as reported on FERC Form 1; and (c) energy sales in kilowatt-hours to such ultimate customers. Engineering and planning costs would be allocated on the basis of the same formula but only among the operating companies. Administrative and other costs in connection with employee-related services would be allocated on the basis of total employees of each company at the end of each year.

CSWS further states that those aspects of the Commission's 1969 order detailing salary allocations for officers of CSWS are out of date. CSWS now proposes that CSW pay the salaries only of its chairman and chief executive officer, of its secretary and of all other personnel located in its Wilmington office and that all other officers of CSWS, whether or not they were also officers of CSW, would receive their salaries from CSWS. CSWS states that at such future time as CSW closes its Wilmington office, if this occurs, all CSW officers who were also officers of CSWS would be paid by CSWS.

CSWS requests that this change in cost allocation be permitted to be made effective as of January 1, 1978.

CSW states that it is hereby withdrawing a previous amendment, post-effective amendment No. 4, previously filed in this proceeding.

It is stated that no State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions. It is stated that the fees and expenses to be incurred in connection with the proposed transactions are estimated at $3,050.

Notice is further given that any interested person may, not later than April 18, 1978, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration, as further amended by said post-effective amendments, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant-declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as amended by said post-effective amendments or as it may be further amended, may be granted and permitted to become effective as provided in rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-8713 Filed 4-3-78; 8:45 am]

[8010-01]

[Rel. No. 20470; (70-5799)]

CONSOLIDATED NATURAL GAS CO.

Post-Effective Amendment regarding Issuance of Common Stock

MARCH, 24, 1978.

Notice is hereby given that Consolidated Natural Gas Co. ("Consolidated"), 30 Rockefeller Plaza, New York, N.Y. 10020, a registered holding company, has filed with this Commission a third post-effective amendment to the declaration in this proceeding pursuant to sections 6(a), 7, and 12(c) of the Public Utility Holding Company Act of 1935 ("Act") regarding the following proposed transactions. All interested persons are referred to the amended declaration, which is summarized below, for a complete statement of the proposed transactions.

By supplemental order dated July 19, 1976 (HCAR No. 19616), the Commission authorized Consolidated to sell up to 750,000 shares of common stock, $8 par value, to its dividend reinvestment plan ("DRP") and to the trustees of the employee stock ownership plan ("ESOP"). Of said 750,000 shares of common stock, an aggregate of 680,000 shares was authorized to be issued to Manufacturers Hanover Trust Co., agent for stockholders participating in the DRP, or its nominee, until December 31, 1978, and an aggregate of 70,000 shares was authorized to be issued to the ESOP trustees until December 31, 1977.

It is stated that as of December 31, 1977, 180,381 shares had been issued to the agent for the DRP, and it is estimated that an additional 160,000 shares will be issued by year end 1978, bringing the total issued at that point to approximately 340,000. As of December 31, 1977, when the Commission's authorization expired, a total of 44,691 shares had been issued to the ESOP trustees.

Consolidated now seeks to extend to December 31, 1979, the authorization to issue up to 750,000 shares of its common stock, $8 par value, to the DRP agents and ESOP trustees. Consolidated proposes to issue to either the DRP or ESOP an unrestricted number of shares not exceeding the unissued balance of the 750,000 shares previously authorized and seeks to amend the declaration, as amended, to eliminate the allocation of 680,000 shares to the DRP and 70,000 shares to the ESOP.

Consolidated states that the Tax Reform Act of 1976 extended the additional 1 percent investment tax credit to qualified property additions made after 1976 through 1980 and that this Act also permits Consolidated to take an additional investment tax credit of 0.5 percent of qualified property additions each year to the extent that matching employee contributions are made to the ESOP. It is further stated that the board of directors of Consolidated has elected to continue the ESOP through 1980 and also to implement the additional 0.5 percent investment tax credit allowed by the Act. Thus, employees of Consolidated and its subsidiaries will be afforded an opportunity to contribute and acquire more shares through the ESOP. However, because of limitations in Consolidated's certificate of incorporation, purchases of shares made with the employees' matching funds will be on the open market. It is currently estimated that the 1½ percent of investment tax credit for 1977 will be $2,300,000. At $40 per share, this figure equals 57,500 shares. On the basis of this estimate, approximately 102,000 shares will have been issued by Consolidated to the trustees of the ESOP from its inception through 1978.

Based upon the above, Consolidated estimates that a total of approximately 442,000 of the 750,000 shares authorized will have been issued by yearend 1978. The remaining 308,000 shares available for both plans, are expected to be sufficient through 1979.

The fees and expenses to be incurred in connection with the this post-effec-

tive amendment are estimated not to exceed $1,050, including $1,000 for services performed by Consolidated natural Gas Service Co., Inc. It is stated that no State or Federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than April 13, 1978, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the post-effective amendment which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as amended or as it may be further amended, may be permitted to become effective as provided in rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-8714 Filed 4-3-78; 8:45 am]

[8010-01]

[Admin. Proceeding File No. 3-5417; Rel. No. 10180; (812-3981)]

THE FIRST NATIONAL BANK OF CHICAGO AND MIDWEST ASSOCIATION OF CREDIT UNIONS

Notice and Order for Hearing on Application Pursuant to Section 6(c) of the Act for Order Exempting Fund From All Provisions of the Act

MARCH 28, 1978.

Notice is hereby given that the First National Bank of Chicago ("Bank"), One First National Plaza, Chicago, Ill. 60670, and Midwest Association of Credit Unions ("MACU"), 402 West 144 Street, Riverdale, Ill. 60627, have filed an application on July 12, 1976, and an amendment thereto on July 1, 1977, for an order pursuant to section 6(c) of the Investment Company Act of 1940 ("Act") exempting the Bank's common trust fund H ("fund") from all the provisions of the Act.

On September 16, 1976, the Commission issued a notice of the filing of the original application (Investment Company Act Rel. No. 9448). The notice, which is incorporated herein by reference, gave interested persons until October 12, 1976, to request a hearing and stated that an order disposing of the application would be issued as of course in the absence of such request. On October 12, 1976, the Investment Company Institute ("ICI") filed a request for a full evidentiary hearing and on October 15, 1976, the Dreyfus Corp. ("Dreyfus") file a similar request.

On July 1, 1977, the Bank and MACU ("applicants") filed an amendment to the application. In the amended application Applicants set forth additional information not included in the original application, but the relevant facts and circumstances surrounding the proposed formation and operation of the fund have not changed. It is found that under these circumstances it is not necessary in the public interest or for the protection of investors to renotice the filing of the application.

It appears to the Commission that it is appropriate in the public interest and in the interest of investors that a hearing be held with respect to the application. It further appears that the issues raised in this matter pertain essentially to law and policy, and that, therefore, an evidentiary proceeding is not warranted. Accordingly,

It is ordered, Pursuant to section 40(a) of the Act, that a hearing limited to written briefs and oral argument before the Commission on the aforesaid application under the applicable provisions of the Act and the rules of the Commission thereunder be held pursuant to a schedule to be determined by the Secretary of the Commission.

The Division of Investment Management has advised the Commission that it has reviewed the application and the requests for hearing, and that upon the basis thereof the following matters of law and policy are presented for consideration:

(1) Whether the fund is excepted from the definition of "investment company" by virtue of section 3(c)(3) of the Act; and, if not:

(2) Whether it is appropriate in the public interest and consistent with the protection of investors and the purposes of the Act to exempt the fund from all the provisions of the Act; or

(3) Whether the granting of the requested exemption would be contrary to the public interest by giving the fund a potential advantage over competing registered investment companies.

It is further ordered, That the Secretary of the Commission shall give notice of the aforesaid hearing by mailing a copy of this notice and order by certified mail to the First National Bank of Chicago, Attn.: Neil McKay, vice chairman and cashier, and the Midwest Association of Credit Unions, Attn.: O. W. Mattson, president, at the addresses noted hereinabove and to Alan B. Levenson, Esq., Fulbright & Jaworski, 1150 Connecticut Avenue NW, Washington, D.C. 20036, the Investment Company Institute, 1775 K Street NW, Washington, D.C. 20006, Attn.: Wayne B. Bardsley, assistant general counsel, and the Dreyfus Corp., 767 Fifth Avenue, New York, N.Y. 10022, Attn.: Daniel C. Maclean, Esq., that notice to all other persons be given by publication of this notice and order in the FEDERAL REGISTER, that a copy of this notice and order shall be published in the "SEC Docket," and that an announcement of the aforesaid hearing shall be included in the "SEC News Digest."

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-8715 Filed 4-3-78; 8:45 am]

[8010-01]

[Rel. No. 20468; (70-61410)]

GULF POWER CO.

Notice of Proposed Transactions Related to Financing of Pollution Control Facilities

MARCH 24, 1978.

Notice is hereby given that Gulf Power Co. ("Gulf"), 75 North Pace Boulevard, P.O. Box 1151, Pensacola, Fla. 32520, a whollyowned electric utility subsidiary of the Southern Co., a registered holding company, has filed an application with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating section 6(b) of the Act and rule 50(a)(5) promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application, which is summarized below, for a complete statement of the proposed transactions.

Pursuant to arrangements with an associate company, Mississippi Power Co. ("Mississippi") (File No. 70-5894), Gulf has under construction unit No. 2 (500 MW) of a steam electric generating station ("Plant Daniel") located in Jackson County, Miss. ("county"). Unit No. 1 of Plant Daniel (500 MW), presently owned by Mississippi, was placed in commercial operation in 1977. Gulf also has acquired from Mississippi a 50 percent undivided interest in certain facilities common to both units. Final consummation f such arrangements at or about the time unit

No. 2 is completed (presently scheduled for 1981) will result in Gulf and Mississippi each becoming owners of 50 percent undivided interests as tenants in common of Plant Daniel. Gulf states that in order to comply with prescribed environmental standards of the State of Mississippi with respect to air and water quality, it has been and will be necessary to construct pollution control facilities solely for this purpose. The present application relates to Gulf's proposal for financing some of such facilities.

It is intended that the county will issue its revenue note in the estimated principal amount of $1,500,000 for the purpose of paying a portion of the costs of the acquisition and construction of certain of the pollution control facilities to be used in connection with unit No. 2 and common facilities at Plant Daniel ("project"). Gulf proposes to enter into an installment sale agreement ("agreement") with the county which will provide for the construction and equipping of the project by the county and the issuance by the county of the revenue note. The proceeds of the sale of the revenue note will be deposited by the county with a bank or trust company which will act as depositary and applied to payment of the cost of construction (as defined in the agreement) of the project. The agreement also will provide for the sale of the project to Gulf and the payment by Gulf of the purchase price of the project in installments over a term of years.

The agreement will provide that the county, at the request of Gulf, may enter into a trust indenture under which the county could issue one or more series of pollution control revenue bonds ("revenue bonds"), for the purposes of providing funds to retire the revenue note and to pay a portion of the costs of construction of the project not covered by the proceeds of revenue notes. In such event, the agreement would be amended or supplemented to provide additional terms and provisions relating to the revenue bonds, including, if Gulf should so elect at that time, provision for the delivery by Gulf of its first mortgage bonds as collateral for its obligations under the agreement. Transactions involved in such arrangements would be made, as appropriate, the subject of separate application to this Commission.

The agreement will also provide that the purchase price of the project payable to the county will be such amount, including interest thereon, as shall be sufficient to pay the principal of, premium, if any, and interest on the revenue note and the revenue bonds, if any, as the same become due and payable. It is contemplated that the revenue note will be sold by the county to Morgan Guaranty Trust Co. of New York ("noteholder") at 100 percent of the principal amount thereof pursuant to a note purchase agreement between the county and said bank. The county will execute an assignment ("assignment") pursuant to which it will assign to the bank, for the period that the revenue note shall be outstanding, the county's rights under the agreement to the portion of the purchase price for the project payable by Gulf as shall be necessary to pay the principal and interest on the note. Gulf will agree under the assignment to make such payments of purchase price directly to the noteholder. The revenue note will have a maturity of 4 years and will bear interest on the unpaid principal amount thereof from time to time at a fluctuating rate per annum equal to 65 percent of the bank's prime rate. The revenue note will be subject to prepayment in whole or in part at the option of Gulf at any time without premium or penalty.

It is proposed that Gulf will enter into a contingent purchase agreement with the noteholder ("contingent purchase agreement") which will provide that the noteholder may require Gulf to purchase the revenue note on demand at 100 percent of the principal amount thereof together with accrued interest upon the occurrence of certain events of default. The contingent purchase agreement will also provide that Gulf may be required to pay the bank at any time (whether or not the revenue note shall have been paid in full or purchased by Gulf) if interest on the note becomes taxable: (i) An amount equal to 130 percent of the noteholder's prime rate (less interest actually paid) plus penalties and expenses and (ii) the amount of any preference tax imposed on the noteholder.

In order to comply with State law it will be necessary for Gulf to convey to the county the portions of the project which have already been constructed ("existing facilities"), subject to the mortgage. Under the agreement, Gulf will receive, out of the proceeds of the revenue note, an amount equal to Gulf's Original cost for the existing facilities. The existing facilities will thereupon become part of the project which is to be provided by the county and which Gulf proposes to purchase as provided in the agreement.

The fees and expenses to be incurred in connection with the proposed transactions are to be filed by amendment. It is stated that the execution of the contingent purchase agreement will have been expressly authorized by the Florida Public Service Commission and that no other State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than April 17, 1978, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application, as filed or as it may be amended, may be granted as provided in rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-8716 Filed 4-3-78 8:45 am]

[8010-01]

[Rel. No. 14600; (SR-MSRB-78-3, 4)]

MUNICIPAL SECURITIES RULEMAKING BOARD

Order Approving Proposed Rule Changes

MARCH 24, 1978.

On January 9, 1978, the Municipal Securities Rulemaking Board (the "MSRB") Suite 507, 1150 Connecticut Avenue NW., Washington, D.C. 20036, filed with the Commission, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of proposed rule changes. the proposed rule changes alter the interdealer confirmation and delivery requirements of MSRB rule G-12 and the customer confirmation requirements of MSRB rule G-15. In particular, the proposed rule changes require that the contra party (in interdealer transactions) or the customer be informed when municipal securities are priced to premium call or to par option, and that brokers, dealers, and municipal securities dealers, when calculating the dollar price of municipal securities sold on a yield basis, give

effect to all calls[1] in order to assure the purchaser of the lowest price. The proposed rule changes also provide that the delivery of a certificate for a municipal security which is registered in the name of a guardian constitutes good delivery under MSRB rule G-12.

Notice of the proposed rule changes together with the terms of substance of the proposed rule changes was given by publication of Commission releases (Securities Exchange Act Release No. 14456 (Feb. 10, 1978) and Securities Exchange Act Release No. 14455 (Feb. 10, 1978)) and by publication in the FEDERAL REGISTER (43 FR 7077 and 43 FR 7078 (1978)). No comments with respect to the proposed rule changes were received by the Commission.

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB and in particular, the requirements of section 15B and the rules and regulations thereunder.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-8717 Filed 4-3-78; 8:45 am]

[8010-01]

[Rel. No. 14599, File No. SR-NYSE-78-15]

NEW YORK STOCK EXCHANGE, INC.

Filing and Effectiveness of Proposed Rule Change

MARCH 24, 1978.

The New York Stock Exchange, Inc. ("NYSE") submitted on March 13, 1978, a proposed rule change under Rule 19b-4 which the NYSE characterizes as an interpretation respecting recent amendments to NYSE Rules 390 (market responsibility rule), 395 (off-board trading in rights) and 396 (off-board trading in bonds). The NYSE submission consists of an informational memorandum to members which sets forth the amended provisions and explains the effects thereof.[2]

The foregoing rule change has become effective, pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Publication of the submission is expected to be made in the FEDERAL REGISTER during the week of March 20, 1978. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views, and arguments concerning the submission within 21 days from the date of publication in the FEDERAL REGISTER. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-NYSE-78-15.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street NW., Washington, D.C.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-8718 Filed 4-3-78; 8:45 am]

[8010-01]

[Admin. Proceeding File No. 3-5404; File No. 81-318]

THOMSON MC KINNON EMPLOYEE STOCK OWNERSHIP TRUST

Application and Opportunity for Hearing

MARCH 23, 1978.

Notice is hereby given that Thomson McKinnon Employee Stock Ownership Trust ("Applicant") has filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 Act") that Applicant be granted an exemption from the provisions of section 15(d).

The Applicant states, in part:

1. Applicant is an employee stock ownership trust created for the benefit of the employees of Thomson McKinnon Inc. (the "Company"), its subsidiary Thomson McKinnon Securities Inc. ("TMSI") and their domestic subsidiaries.

2. The Applicant has only one class of securities outstanding which are subject to the reporting obligations of the 1934 Act, a debt issue which had been registered under the Securities Act of 1933.

3. The Company has guaranteed the repayment obligations of the Applicant's above-referenced debt issue.

4. The Company is subject to the reporting requirements of the 1934 Act.

In the absence of an exemption, Applicant would be subject to the periodic reporting requirements of section 15(d) of the 1934 Act.

Applicant contends that there would be no useful purpose served by the filing of reports in view of the fact that all obligations attendant to its debt securities are guaranteed regardless of its financial condition and there is adequate public information concerning such guarantor.

For a more detailed statement of the information presented, all persons are referred to said application which is on file in the offices of the Commission at 500 North Capitol Street, Washington, D.C.

Notice is further given that any interested person not later than April 24, 1978, may submit to the Commission in writing his views or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

SHIRLEY E. HOLLIS,
Assistant Secretary.

[FR Doc. 78-8719 Filed 4-3-78; 8:45 am]

---

[1] We understand that these proposed rule changes are not designed to require that the calculation of the dollar price of municipal securities sold on a yield basis include the effect of catastrophe calls. this exclusion is not evident from the text of the proposed rule changes. We would expect that the MSRB would amend these rules to clarify the status of catastrophe calls.

[2] The Commission's amendment of Rule 19c-1 (17 CFR 240.19c-1) under the Act became effective on Mar. 1, 1978, and necessitated revision of the above-mentioned NYSE Rules. See Securities Exchange Act Release No. 14325 (Dec. 30, 1977) (43 FR 1327 (Jan. 9, 1978)) for further information regarding amended Rule 19c-1.

[8010-01]

[Rel. No. 623; (803-8)]

WEISS, PECK & GREER

Filing of Application Pursuant to Section 206A of the Investment Advisers Act of 1940 for an Order of Exemption From the Provisions of Section 205 Thereof

MARCH 28, 1978.

Notice is hereby given that Weiss, Peck & Greer ("Applicant") 30 Wall Street, New York, N.Y. 10005, a diversified securities firm and member of the New York Stock Exchange and various other stock exchanges and also registered with the Commission as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act"), filed an application on December 15, 1977, and an amendment thereto on January 30, 1978, pursuant to section 206A of the Advisers Act for an order of the Commission exempting Applicant from the provisions of section 205 of the Advisers Act to the extent necessary to allow it to participate in the organization of a new venture capital enterprise, and to share in compensation based on a percentage of capital gains formula subject to two conditions described below. Applicant is engaged in a brokerage business for institutions and individuals, conducts specialist activities, serves as investment manager for various pension and profit-sharing trusts and acts as investment adviser to two mutual funds. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant, in conjunction with BankAmerica Capital Corp. ("BCC"), a wholly owned subsidiary of BankAmerica Corp. ("BankAmerica"), desires to form a venture capital investment enterprise ("Fund") to be structured as a limited partnership whose limited partners will consist of fewer than 15 sophisticated individual and institutional investors.

The minimum capital contribution of each limited partner will be $1 million. The Fund's principal investment objective will be to make private equity and venture capital investments. The application states that the Fund's limited partnership interests will be offered and sold in such a manner as to be exempt from registration under the Securities Act of 1933 by reason of section 4(2) of that Act. It is further stated that the Fund itself will be exempt from registration as an investment company by reason of section 3(c)(1) of the Investment Company Act of 1940. BCC currently acts as a private investment manager to Bank- America and to two subsidiaries of the Bank, and is presently exempt from registration as an investment adviser under the Advisers Act pursuant to section 203(b)(3) thereof.

The Fund's sole general partner (the "General Partner") will also be structured as a limited partnership, and will have four individual general partners, each of whom will be a venture capital professional. Applicant will be the General Partner's sole limited partner. The initial capital of the General Partner will consist of $1 million to be contributed by Applicant with additional but as yet undetermined amounts to be contributed by the individual general partners. The General Partner, as general partner of the Fund, will invest not less than $1 million in the Fund. Philip Greer, presently a general partner of Applicant and member of its executive committee, will become the managing general partner of the General Partner and will be responsible for the administration of the General Partner's affairs. Personnel of the General Partner will originate and initially review all investment opportunities for the Fund and refer favorable investment prospects to BCC which, as noted below, will serve as the Fund's investment adviser, for further review and approval. The General Partner may also render corporate development services to the Fund's portfolio companies, and, as a representative of the Fund, will be responsible for voting all securities held by the Fund. Where appropriate, the individual general partners of the General Partner may also serve on the boards of directors of portfolio companies. The Fund's portfolio companies may be charged a fee for consulting services provided them by the General Partner. Applicant states that it is anticipated that these consulting fees will be less than the costs and expenses of the General Partner's operations. However, in the event that such fees exceed the costs and expenses of the General Partner's operations, the excess will inure to the benefit of the Fund.

The General Partner shall be entitled to receive, as and when distributed, an amount equal to 12 percent of the net realized capital gains of the Fund. Approximately two-thirds of any such distribution will be allocated to Applicant in its capacity as the limited partner of the General Partner; the other approximate one-third will be allocated to the individual general partners of the General Partner. The General Partner will also be entitled to reimbursement from the Fund for all of its expenses, including the salaries of its venture capital executives (including the individual general partners and administrative personnel). In addition, as an investor in the Fund, the General Partner will be entitled to its pro rata portion of the profits of the Fund, and will also bear its pro rata portion of losses incurred by the Fund, based upon the share of the Fund's capital invested by the General Partner. Applicant, as limited partner of the General Partner, will share in such profits and losses in the same proportion that its capital represents to the capital of the General Partner.

BCC will act as the investment adviser to the Fund pursuant to an advisory contract. BCC will not make any capital contribution to the Fund, although its parent BankAmerica will contribute $1 million to the Fund's capital. BCC will review and approve or reject investment proposals and recommendations submitted to it by any two of the individual general partners of the General Partner. As compensation, BCC will receive from the Fund a fixed fee equal to ¼ percent of 1 percent per annum of the average value of the Fund's investments in portfolio companies based on values at the beginning and end of the Fund's fiscal year, plus an incentive fee in an amount equal to 8 percent of the net realized capital gains of the Fund, as and when distributed.

For the first three or four years of the Fund's existence, there will be no fee paid to the General Partner or BCC based on the net realized gains of the Fund. If capital gains are realized in the early years, there will be distributed to the limited partners of the Fund and to the General Partner and BCC not less than 35 percent of net capital gains realized, to provide them monies with which to fulfill their income tax obligations resulting from such realized gains. Thereafter, periodic distributions may be made to the General Partner and BCC based upon their respective shares of the net realized capital gains of the Fund, as set forth above. Each time a distribution or payment is to be made to the General Partner or BCC, the General Partner will value the assets of the Fund in order to determine the amount of current net realized capital gains available for such distribution. In computing this amount any net unrealized losses accruing to the Fund will be offset against realized gains. The General Partner's valuation will be subject to the review and approval of BCC. Periodic distributions will then be limited to one-half of the amount available for distribution to the General Partner and BCC—that is, the periodic distributions will not exceed 10 percent of the amount by which net realized capital gains exceed net unrealized capital losses. The remaining 10 percent of the amount by which net realized gains exceed net unrealized losses will not be distributed to the General Partner or BCC until dissolution of the Fund. The Fund will seek an independent review of any valuation made by the General Partner in connection with such a pe-

riodic distribution, in the event that limited partners of the Fund who shall have contributed 20 percent or more of the capital of the Fund so request, and the distribution will be modified in accordance with such independent review.

All periodic distributions to the General Partner and BCC will be based upon year-end financial statements of the Fund (which will be audited by independent certified public accountants). In no case, however, will any such distribution be based upon financial statements more than four months old, and will not be based on such financial statements if valuations have changed so that it is unreasonable under the circumstances to do so. It should be noted that these periodic distributions to the General Partner and BCC are in addition to the General Partner's annual pro-rata share of profits and losses of the Fund (based upon the share of capital invested by the General Partner) and the annual fixed fee payable to BCC pursuant to its advisory contract with the Fund.

It is anticipated that the initial capital of the Fund will be between $20 and $40 million. These estimates include the $1 million capital contribution of the General Partner and a like contribution to the Fund's initial capital from BankAmerica. BankAmerica's capital contribution may be as much as 5 percent of initial capital of the Fund, but in no event will BankAmerica's investment exceed that figure. The capital of all limited partners and the General Partner will be invested for the entire life of the Fund, presently estimated to be ten years with the possibility existing that the Fund may repay on a pro-rata basis some portion of the total capital outstanding periodically after the sixth year. The Fund will require each limited partner to advance only an agreed percentage of each partner's capital contribution to the Fund upon formation, with the remainder to be advanced upon periodic "capital calls" by the General Partner. Applicant's capital contribution to the General Partner will be keyed to that of the limited partners of the Fund. Thus, Applicant will have no right to withdraw any part of its capital contribution to the General Partner during the term of the Fund. However, should the Fund return capital to its partners Applicant would receive a return of its capital contribution from the General Partner in a like proportionate amount. Applicant's capital contribution to the General Partner will also be triggered by "capital calls," so that the percentage of Applicant's capital contribution which is invested in the General Partner will always be the same as the percentage of each limited partner's contribution invested in the Fund.

The Fund's principal purpose will be to make private equity and venture capital investments. Accordingly, the Fund will seek to invest in securities of small and medium-size developing companies, primarily by direct investment on a negotiated basis. However, some Fund investments may also be made otherwise than by direct investment. For example, the Fund may provide capital to assist entrepreneurs or management in buying divisions of large companies in order to establish new and smaller independent companies. No fixed investment standards will be established. The Fund's investment program will also include securities of companies of this type which are purchased in the public securities markets. The percentage of Fund assets which will be represented by marketable securities will vary, but it is represented that such securities will not comprise the major part of the Fund's assets. In this regard, Applicant states that it is anticipated that not more than one-third of the Fund's capitalization (at cost) or assets (at market value) will be invested in marketable securities at any time.

Section 206A of the Advisers Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person or transaction, or any class or classes of persons or transactions, from any provision or provisions of the Advisers Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Advisers Act. Section 205 of the Advisers Act, in pertinent part, prohibits an investment adviser from entering into or performing any investment advisory contract which provides for compensation to the investment adviser based on a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client. Section 208(d) of the Advisers Act provides: "It shall be unlawful for any person indirectly, or through or by any other person, to do any act or thing which it would be unlawful for such person to do directly * * *." Although it will not serve in an advisory capacity with respect to the Fund, Applicant is concerned that its indirect participation in any compensation based on a percentage of capital gains realized by the Fund might, absent the requested order, be prohibited by section 205 of the Advisers Act under the provisions of section 208(d) thereof.

Applicant argues that the procedures by which Fund distributions to the General Partner will be determined result in the General Partner, and therefore Applicant, as its limited partner, being subject to the same investment risks as are the Fund's limited partners. Applicant contends that because such distributions will be based on the amount by which the Fund's net realized capital gains exceed unrealized capital losses any incentive for the General Partner to take unwarranted investment risks (the concern underlying section 205(1) of the Advisers Act) is significantly reduced. Applicant argues that this is particularly true since it, through the General Partner, will be investing at least $1 million in the Fund, and thus will be sharing ratably in all losses incurred by the Fund. Applicant further contends that the requested order is consistent with the protection of investors because the individuals who will be limited partners in the Fund will be sophisticated individuals or institutions able to fend for themselves, who are therefore not in need of the specific protections provided by the Advisers Act.

Applicant also represents that it will not participate in the management of the Fund, or give advice to potential limited partners with respect to investing in the Fund. Applicant points out that with the single exception of Mr. Greer the General Partner will have no management personnel in common with Applicant; and that Mr. Greer will devote substantially all of his time to the venture capital area and will have no direct role in Applicant's public investment advisory business. Applicant also points out that the General Partner will incur no indebtedness to it. Applicant contends that since the General Partner will have its own capital, personnel, physical operation and financial structure separate and apart from that of Applicant, the business of the General Partner should not be attributed to Applicant.

Applicant further contends that its regular advisory business will be entirely separate and distinct from its participation as a limited partner in the General Partner of the Fund. Applicant's regular investment advisory business is principally directed to serving as investment manager for ERISA accounts, mutual funds and individual clients, where the investment emphasis is, in general, to avoid undue risks so as to preserve capital. In view of the substantially different investment objectives and policies of the Fund and Applicant's advisory business, Applicant represents that it is unlikely to recommend to its investment advisory clients that they invest in securities in which the Fund has an interest. However, to whatever extent Applicant may recommend such investments to its advisory clients (or itself make such as investment), Applicant represents that Applicant's decision-making process will take place in its investment advisory management group (which will not include Mr. Greer), and will be

entirely separate from any activities carried on by applicant in connection with its interest in the Fund. In addition, Applicant represents that it will maintain records of its recommendations relating to such securities and all transactions by its investment advisory clients and the fund in such securities, and will provide access to those records to the Commission.

Finally, Applicant states that performance compensation, such as that to which the General Partner will be entitled, is the traditional form of compensation in the venture capital business. Applicant contends that since venture capital managers participate actively in the development of corporate strategies for and the direction of their constituent companies, and provide outside consulting assistance and ancillary support as needed, it is altogether appropriate that such managers be compensated for their services on an entrepreneurial basis. Thus, Applicant argues that granting of the requested order would be appropriate in the public interest because it would allow a registered investment adviser to invest in a venture capital manager, thereby supporting the dual objectives of providing venture captial investors with experienced, financially stable managers and facilitating the flow of needed capital to unseasoned businesses.

In an attempt to insure that granting of the requested order of the Commission exempting Applicant to the extent necessary from the provisions of section 205 of the Advisers Act will meet all of the tests contained in section 206A of the Advisers Act, Applicant has agreed to incorporate the following two conditions into any order which may be issued in this matter. The first condition will specifically require that the limited partnership interests in the Fund be sold only to sophisticated individual and institutional investors in compliance with the provisions of section 4(2) of the Securities Act of 1933, each of which will make a minimum capital contribution of not less than $1 million. The second condition will specifically require that Applicant invest, as a limited partner, not less than $1 million in the General Partner. Applicant asserts that the incorporation of these conditions into the requested order of the Commission renders the issuance of such order appropriate in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and purposes of the Advisers Act.

Notice is further given that any interested person may, not later than April 19, 1978, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

By the Commission.

SHIRLEY E. HOLLIS,
Assistant Secretary.

[FR Doc. 78-8720 Filed 4-3-78; 8:45 am]

[8010-01]

[Release No. 34-14611; File No. 4-275]

PROGRAM FOR ALLOCATION OF REGULATORY RESPONSIBILITIES

Filing of NASD/CBOE Plan

The National Association of Securities Dealers, Inc. (the "NASD") and the Chicago Board Options Exchange, Inc. (the "CBOE") filed with the Commission on February 24, 1978, a plan for the allocation of regulatory responsibilities pursuant to rule 17d-2 (17 CFR 240.17d-2) ("§ 240.17d-2").

Generally, the proposed plan would allocate to the NASD the responsibility to perform certain membership services with respect to persons who are associated with members of both the NASD and CBOE ("dual members") and are, or seek to become, Registered Options Principals ("ROP's") of the NASD or the CBOE.

Under the plan, the NASD would process applications submitted by dual members on behalf of associated persons who are seeking registration as ROP's under the rules of either the CBOE or the NASD.[1] The CBOE would advise its dual members to submit to the NASD, for each applicant, a CBOE Consent to Jurisdiction Form and a Form U-4 with the appropriate box checked to show the applicant is subject to the CBOE's rules and regulations. Upon receipt of these forms, the NASD would forward to the applicant the appropriate ROP examination request form as well as materials designed to prepare the applicant for the ROP examination. The NASD would grade and maintain the examination answer sheet and forward test results to the applicant's employer. If the applicant passed the examination and no statutory disqualification existed, the applicant would become registered, and the NASD would so advise the applicant's employer. In the event the NASD discovered a statutory disqualification while processing an application, the NASD would be responsible for determining the acceptability or continued acceptability of the person subject to the statutory disqualification and would promptly notify the CBOE of such disqualification. The NASD would retain in its registration files all documentation submitted by the registrant and all information related to his status as a ROP.

Under the plan the NASD would also process registration records of ROP's registered with the NASD or CBOE. The CBOE would advise its dual members to submit all materials regarding the status of their ROP's to the NASD. In turn, the NASD would furnish the CBOE each month with a list of all ROP's and the firms for which they are registered. The NASD would also advise the CBOE promptly of any terminations of ROP's for cause relating to listed options transactions, but the CBOE would be responsible for investigating such terminations and taking appropriate disciplinary action.

The NASD would collect registration and examination fees, as well as transfer fees, for ROP's who transfer from one member to another. For each new ROP or transferee, the NASD would forward the appropriate registration or transfer fee to the CBOE on a monthly basis.

The NASD/CBOE plan contains a provision which would limit the parties' liability under the plan. Another provision of the plan contains a request that the Commission relieve the CBOE of responsibilities the NASD would assume under the plan.

In order to assist the Commission in determining whether to approve this

[1] Currently, the NASD has no approved options program and no rule requiring registration of an Options Principal with the NASD. However, the NASD has filed with the Commission proposed rule changes which, if approved, would amend Schedule C of the NASD's By-Laws to require any member effecting, or intending to effect, transactions in exchange-listed securities on an access basis to have a person associated with it registered with the NASD as a ROP. See Securities Exchange Act Release No. 14307 (December 23, 1977), 43 FR 53 (1978). A so-called "access firm" engages in options activity through clearing members of an options exchange, although the access firm is not itself an exchange member.

plan and relieve the CBOE of the specified responsibilities which the plan would allocate to the NASD, interested persons are invited to submit written date, views and arguments concerning the submission within thirty (30) days from the date of the publication of this notice in the FEDERAL REGISTER. Persons wishing to comment should file six (6) copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 40549. Reference should be made to File No. 4-275.

Copies of the submission and of all written comments will be available for inspection at the Securities and Exchange Commission's Public Reference Room, 1100 L Street NW., Washington, D.C.

By the Commission.

Dated: March 27, 1978.

SHIRLEY E. HOLLIS,
Assistant Secretary.

[FR Doc. 78-8721 Filed 4-3-78; 8:45 am]

[8025-01]

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 1441; Amdt. No. 2]

CALIFORNIA

Declaration of Disaster Loan Area

The above numbered Declaration (see 43 FR 9546), and Amendment No. 2 (see 43 FR 12418), are amended in accordance with the President's declaration of February 15, 1978, to include Inyo, San Diego, and San Luis Obispo Counties and adjacent counties within the State of California. The Small Business Administration will accept applications for disaster relief loans from disaster victims in the above-named counties, and is extending the filing date for applications for physical damage until the close of business on May 12, 1978, and for economic injury until the close of business on December 13, 1978.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: March 21, 1978.

A. VERNON WEAVER,
Administrator.

[FR Doc. 78-8784 Filed 4-3-78; 8:45 am]

[8025-01]

[License No. 03/04-0076]

CAPITOL AREA INVESTORS, INC.

Surrender of License

Notice is hereby given that, pursuant to § 107.105 of the Small Business Administration's (SBA) rules and regulations governing Small Business Investment Companies (13 CFR 107.105 (1977)), Capitol Area Investors, Inc. (CAI), 3701 Chain Bridge Road, Fairfax, Va. 22030, incorporated under the laws of the Commonwealth of Virginia has surrendered its License No. 03/04-0076, which was issued by SBA on August 22, 1962.

Interested persons were given an opportunity to send their comments to SBA on the proposal published in the FEDERAL REGISTER on November 1, 1977 (42 FR 57201). No comments were received.

Therefore, under the authority vested by the Small Business Investment Act of 1958, as amended, and pursuant to the above cited regulation, the license of CAI is hereby accepted and it is no longer licensed to operate as a small business investment company.

Dated: March 23, 1978.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc. 78-8783 Filed 4-3-78; 8:45 am]

[4710-02]

DEPARTMENT OF STATE

Agency for International Development

[Redelegation of Authority No. 99.1.1, Amdt. No. 8]

CHIEF, REGIONAL OPERATIONS DIVISION, ET AL.

Redelegation of Authority Regarding Contracting Functions

Pursuant to the authority delegated to me by Redelegation of Authority No. 99.1 dated May 1, 1973 (38 FR 12836), as amended, Redelegation of Authority No. 99.1.1 is further amended as follows:

1. Paragraph A is revised to read:

A. To the Chief, Regional Operations Division; Special Assistant to the Chief, Regional Operations Division; Chief, Africa Branch; Chief, Latin America and Caribbean Branch; Chief, Asia Branch; Chief, Near East Branch; Chief, Central Operations Division; Special Assistant to the Chief, Central Operations Division; Chief, Agriculture and Nutrition Branch; Chief, Population and Education Branch; Chief, Other Programs Branch; Chief, Services Operations Division; Special Assistant to the Chief, Services Operations Division; Chief, PDC Branch; Chief, International and Interagency Branch; Chief, Overhead and Special Costs Branch; Chief, Support Division; Chief, Support Services Branch; Chief, Field Support and Review Branch; authority to sign:

2. Paragraph A(2) is deleted in its entirety.

Actions within the scope of this redelegation heretofore taken by the officials herein are hereby ratified and confirmed.

This amendment is effective immediately.

Dated: March 22, 1978.

HUGH L. DWELLEY,
Director, Office of Contract Management.

[FR Doc. 78-8723 Filed 4-3-78; 8:45 am]

[4710-02]

[Redelegation of Authority No. 99.1.2, Amdt. No. 2]

CHIEF, SERVICES OPERATIONS DIVISION

Redelegation of Authority

Pursuant to the authority delegated to me by Redelegation of Authority No. 99.1 dated May 1, 1973 (38 FR 12836), as amended, Redelegation of Authority No. 99.1.2 is further amended to substitute "Chief, Services Operations Division, and Chief, International and Interagency Branch" for "Chief, Special Operations Division, and Chief, Participating Agency Branch" in the first paragraph.

This amendment is effective immediately.

Dated: March 22, 1978.

HUGH L. DWELLEY,
Director, Office of Contract Management.

[FR Doc. 78-8724 Filed 4-3-78; 8:45 am]

[4710-02]

[Redelegation of Authority No. 99.1.67, Amdt. No. 2]

MISSION DIRECTOR, USAID, DAMASCUS

Redelegation of Authority

Redelegation of authority regarding contracting functions No. 99.1.67, dated February 21, 1975, as amended on January 4, 1978, is hereby further amended to delete all references to "AID Representative, U.S. Embassy to the Syrian Arab Republic" and substitute in lieu thereof "Mission Director, USAID, Damascus."

Dated: March 22, 1978.

HUGH L. DWELLEY,
Director, Office of Contract Management.

[FR Doc. 78-8725 Filed 4-3-78; 8:45 am]

[4710-02]

[Redelegation of Authority No. 99.1]

DIRECTOR, OFFICE OF CONTRACT MANAGEMENT

Redelegation of Authority Concerning Contracting and Related Functions

Pursuant to the authority delegated to me by Delegation of Authority No.

99 dated April 27, 1973 (38 FR 12834), as amended, Redelegation of Authority No. 99.1 is further amended to delete paragraph 1.b. in its entirety.

This amendment is effective immediately.

Dated: March 16, 1978.

DONALD G. MACDONALD,
Assistant Administrator for Program and Management Services.

[FR Doc. 78-8727 Filed 4-3-78; 8:45 am]

[4910-61]

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

PROPOSED PROCEDURES FOR CLOSING OF 1978 NAVIGATION SEASON

Request for Comments

For the past few years the closing of the navigation season on the Montreal-Lake Ontario section of the St. Lawrence Seaway has presented considerable operating difficulties and uncertainties both to vessels and the Seaway entities of the United States and Canada. In 1977, for example, there were eighty-three ocean vessels remaining in the Seaway system on December 15. Of these, fifty-four had not yet reached the call-in point which the Seaway entities had announced on November 18 as being in requirement for December 15. As a result a number of ocean vessels were faced with the very real possibility of being trapped in the Seaway system throughout the winter. Because of unseasonably mild weather for several days in mid-December all ocean vessels were eventually cleared, the last exiting on December 26.

In an effort to prevent a recurrence of this situation in 1978 and future years, the Saint Lawrence Seaway Development Corporation, Department of Transportation, and its Canadian counterpart, the St. Lawrence Seaway Authority, are proposing to establish special procedures designed to encourage the timely and orderly exit of vessels prior to the close of navigation. The establishment of such procedures has been recommended by representatives of ocean and Great Lakes vessels which make regular use of the Montreal-Lake Ontario section of the Seaway. The procedures presented in this notice have been developed by the Seaway entities after discussions with representative of the vessel industries which serve both the United States and Canada.

It is the intention of the Seaway entities to develop a closing procedure which will be understood, accepted, and adhered to by the vessel industry. The importance of an early announcement of closing procedures because of their possible affect on the scheduling and deployment of vessels is recognized by the entities. Accordingly, interested persons are requested to submit comments on the proposed closing procedure by April 15, 1978.

Comments should be addressed to, and additional information may be obtained from: Robert J. Lewis, Director, Office of Systems and Economic Analysis, Saint Lawrence Seaway Development Corporation, 800 Independence Avenue SW., Washington, D.C. 20591; telephone 202-426-3574. All comments submitted in response to this request will be available for examination by interested persons.

The closing procedures are being proposed by the Saint Lawrence Seaway Development Corporation pursuant to the authority contained in the Act of May 13, 1954 (33 U.S.C. 981-988).

Accordingly, the following procedures are proposed for the closing of the 1978 navigation season on the Montreal-Lake Ontario section of the St. Lawrence Seaway:

1. The 1978 closing date for the Montreal-Lake Ontario section of the Seaway will be at 2400 hours, December 17, 1978. At that time all downbound vessels should be clear of St. Lambert Lock and upbound vessels should be clear of Iroquois Lock. To meet the December 17th closing date, vessel call in requirements are established as follows:

(a) No downbound vessels will be accepted for transit at CIP whaleback after 2400 hours, December 15, 1978.

(b) No upbound vessels will be accepted for transit at CIP Cap St-Michel after 2400 hours, December 15, 1978.

Vessels which the Seaway entities determine have reached the designated calling in points by 2400 hours on December 15, will be cleared through the system, weather and ice conditions permitting. Vessels which have not reported at the designated calling-in points may be allowed to transit if, in the sole judgment of the Seaway entities such transits can be permitted; and if such transit is allowed, these transit privileges will be assessed an operational surcharge as follows:

For reporting on: December 16, $25,000 for the transit; December 17, $50,000; December 18, $75,000; December 19 and thereafter, $100,000.

The Seaway entities may adjust the above dates and corresponding surcharges in extraordinary cases requiring a temporary suspension of navigation in excess of 24 hours.

2. Lock 1 in the Welland Canal will be closed on December 6th at 2400 hours to all upbound vessels transiting into the Great Lakes and wishing to return downbound through St. Lambert Lock.

3. During the period when system capacity is significantly reduced by daylight navigation and severe weather and ice conditions, restrictions on low-powered vessels are necessary in order to process efficiently the maximum number of vessels.

Therefore, based on past experiences, taking into account vessel dimensions, draft, and horsepower, the following restrictions will apply during the 1978 closing period:

As of 0001 hours on December 5, vessels in the following categories will not be accepted for transit in the St. Lambert-Iroquois area:

Upbound: (a) Vessels with a power to length ratio (kw/meters) 25 : 1 or less.
(b) Vessels with a draft of 50 dm or less.
Downbound: (a) Vessels with a power to length ratio (kw/meters) 15 : 1 or less.
(b) Vessels with a draft of 25 dm or less.

NOTE.—The above draft restrictions do not apply to tugs.

For determining the power to length ratio, the information contained in the Lloyd's Registry will be used.

Vessel operators may utilize a tug of no less than 3000 h.p. to augment the power of a vessel.

In calculating the vessel's power to length ratio, 50% of the tug's horsepower can be added to the vessel's power.

Operators are cautioned that the above rules are minimum standards and do not assure transit. The Seaway Entities reserve the right to apply more restrictive criteria as ice conditions may dictate.

Issued in Washington, D.C. on March 30, 1978.

D. W. OBERLIN,
Administrator.

[FR Doc. 78-8811 Filed 4-3-78; 8:45 am]

[4810-35]

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1977 Rev., Supp. No. 14]

SURETY COMPANIES ACCEPTABLE ON FEDERAL BONDS

A certificate of authority as an acceptable surety on Federal bonds is hereby issued by the Secretary of the Treasury to the following company under Sections 6 to 13 of Title 6 of the United States Code. An underwriting limitation of $51,000 has been established for the company.

NAME OF COMPANY, BUSINESSS ADDRESS, AND STATE IN WHICH INCORPORATED

Builders Mutual Surety Company, 1545 Wilshire Blvd., Suite 516, Los Angeles, California 90017, California.

Certificates of authority expire on June 30 each year, unless sooner revoked, and new certificates are issued on July 1 so long as the companies

remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information. Copies of the circular, when issued, may be obtained from the Audit Staff, Bureau of Government Financial Operations, Department of the Treasury, Washington, D.C. 20226.

Dated: March 28, 1978.

D. A. PAGLIAI,
Commissioner, Bureau of Government Financial Operations.

[FR Doc. 78-8799 Filed 4-3-78; 8:45 am]

[7035-01]

INTERSTATE COMMERCE COMMISSION

[Notice No. 626]

ASSIGNMENT OF HEARINGS

MARCH 30, 1978.

Cases assigned for hearing, postponement, cancellation, or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

MC 73165 (Sub-No. 424), Eagle Motor Lines, Inc., and MC 106497 (Sub-No. 153), Parkhill Trucking Co., are now assigned for hearing April 25, 1978, at the Offices of the Interstate Commerce Commission, Washington, DC.

MC 108119 (Sub-No. 66), E. L. Murphy Trucking Co., now assigned May 4, 1978, at Columbus, OH, is canceled and reassigned for April 25, 1978, at the Offices of the Interstate Commerce Commission, Washington, DC.

MC 44914 (Sub-No. 3), Williamette Valley Transfer Co., is assigned for hearing May 1, 1978, at Salem, OR, and will be held at Room No. 454, State Capital Building.

MC 111302 (Sub-No. 99), Highway Transport, Inc., now being assigned for continued hearing on the 2d day of May 1978 (1 day), in Room A-440, Federal Courthouse Annex, 801 Broadway, Nashville, TN.

MC-F-13311, Whitfield Transportation, Inc.—Purchase—Idaho Falls Transfer & Storage Co., and MC 108461 (Sub-No. 128), Whitfield Transportation, Inc., now assigned April 18, 1978, at Boise, ID, is canceled and reassigned for April 18, 1978 (4 days), at the Holiday Inn, 1575 Regal Row, Dallas, TX, and will continue April 24, 1978 (10 days), in room 206, Bankruptcy Court, U.S. Post Office and Federal Building, North Eighth and Bannock Streets.

MC 2368 (Sub-No. 67), Bralley-Willett Tank Lines, Inc., now being assigned May 4, 1978 (1 day), at Columbus, OH, in a hearing room to be later designated.

FD 28145, Merchants Delivery Co.—Investigation of Practices, is now assigned for hearing May 31, 1978 (1 day), at Kansas City, MO, at a location to be later designated.

MC 113651 (Sub-No. 237), Indiana Refrigerator Lines, Inc., is now assigned for hearing June 1, 1978 (2 days), at Kansas City, MO, at a location to be later designated.

MC 115669 (Sub-No. 165), Dahlsten Truck Line, Inc., is now assigned for hearing June 5, 1978 (1 week), at Kansas City, MO, at a location to be later designated.

MC 133233 (Sub-No. 52), Clarence L. Werner, d.b.a. Werner Enterprises, is assigned for continued hearing on May 16, 1978 (1 day), at Chicago, IL, at a location to be later designated.

MC 118989 (Sub-No. 165), Container Transit, Inc., is now assigned for hearing May 17, 1978 (1 day), at Chicago, IL, at a location to be later designated.

MC 36432 (Sub-No. 1), Fresh Fruit & Vegetables, Transcontinental Eastbound, now assigned May 2, 1978, at San Francisco, CA, is postponed indefinitely.

MC 36103, *Louis Dreyfus Corporation* v. *The Atchison, Topeka & Santa Fe Railway Company, et al.*, now assigned April 18, 1978, at the Offices of the Interstate Commerce Commission, Washington, DC.

MC 36719, *Arkansas Power & Light Company System Fuels, Inc.*, v. *Burlington Northern Inc., et al.*, now assigned May 9, 1978, at Washington, DC, is canceled and reassigned to May 31, 1978, at the Offices of the Interstate Commerce, Washington, DC.

MC 119792 (Sub-No. 67), Chicago Southern Transportation Co., now assigned May 16, 1978, at Chicago, IL, is canceled and application dismissed.

MC 115215 (Sub-No. 27), New Truck Lines, Inc., application dismissed.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-8821 Filed 4-3-78; 8:45 am]

[7035-01]

[Tenth Revised Exemption No. 128]

EXEMPTION UNDER PROVISION OF RULE 19 OF THE MANDATORY CAR SERVICE RULES ORDERED IN EX PARTE NO. 241

To:
The Atchison, Topeka and Santa Fe Railroad Co.
• • •
Chicago, Milwaukee, St. Paul and Pacific Railroad Co.
Chicago, Rock Island and Pacific Railroad Co.
Consolidated Rail Corp.
Illinois Central Gulf Railroad Co.
Louisville and Nashville Railroad Co.
Missouri-Illinois Railroad Co.
Missouri Pacific Railroad Co.
Seaboard Coast Line Railroad Co.
Southern Railway Co.

It appearing, That the ten railroads listed below have mutually agreed to the use of each other's empty plain cars having mechanical designations "XM", "FM"—less than 200,000 lbs., "GA", "GB", "GD", "GH", and "GS" and bearing reporting marks assigned to such carriers.

It further appearing, That these ten railroads have mutually agreed to participate in an Expanded Clearinghouse Project in which each road will treat the cars of the none roads as systems, with the Car Service Division of the AAR acting as agent.

It is ordered, That pursuant to the authority vested in me by Car Service Rule 19, empty plain cars described in the Official Railway Equipment Register ICC-RER No. 406, issued by W. J. Trezise, or successive issues therof as having mechanical designations "XM", "FM"-less than 200,000 lbs., "GA", "GB", "GD", "GH", and "GS" and bearing the following reporting marks are exempt from the provisions of Car Service Rules 1 and 2, while on the lines of any of the above named railroads.

The Atchison, Topeka and Santa Fe Railroad Co.
Reporting Marks: ATSF Effective August 22, 1976.
• • •
Chicago, Milwaukee, St. Paul and Pacific Railroad Co.
Reporting Marks: MILW, effective July 15, 1976.
Chicago, Rock Island and Pacific Railroad Co.
Reporting Marks: RI-ROCK, effective September 12, 1976.
Consolidated Rail Corp.
Reporting Marks: BCK-CNJ-CR-DL&W-EL-ERIE-LV-NH-NYC-PAE-PC-PCA-PRR-RDG-TOC. Effective November 6, 1977.
Illinois Central Gulf Railroad Co.
Reporting Marks: ICG-GM&O-IC, effective August 22, 1976.
Louisville and Nashville Railroad Co.
Reporting Marks: L&N-CIL-MON-NC, effective August 15, 1976.
Missouri-Illinois Railroad Co.
Reporting Marks: MI, effective July 15, 1976.
Missouri Pacific Railroad Co.
Reporting Marks: MP-C&EI-KO&G-T&P, effective July 15, 1976.
Seaboard Coast Line Railroad Co.
Reporting Marks: SCL-ACL-C&WC-SAL, effective August 15, 1976.
Southern Railway Co.
Reporting Marks: SOU-AEC-CG-GF-NS-SA, effective July 15, 1976.

It is further ordered, That this order will become effective for specific ownerships on dates to be set by the Car Service Division as each road is phased into the Project starting July 15, 1976, the Car Service Division to issue appropriate notification to Project participants, and to advise the undersigned.

• • • Chicago and North Western Transportation Co. eliminated, effective March 18, 1978.

Effective 12:01 a.m., March 18, 1978, and continuing in effect until further order of this Commission.

Issued at Washington, D.C., March 3, 1978.

INTERSTATE COMMERCE COMMISSION,
JOEL E. BURNS,
Agent.

[FR Doc. 78-8822 Filed 4-3-78; 8:45 am]

[7035-01]

[Seventeenth Revised Exemption No. 129]

EXEMPTION UNDER PROVISION OF RULE 19 OF THE MANDATORY CAR SERVICE RULES ORDERED IN EX PARTE NO. 241

It appearing, That the railroads named herein own numerous 40-ft. plain boxcars; that under present conditions, there is virtually no demand for there cars on the lines of the car owners; that return of these cars to the car owners would result in their being stored idle on these lines; that such cars can be used by other carriers for transporting traffic offered for shipments to points remote from the car owners; and that compliance with Car Service Rules 1 and 2 prevents such use of plain boxcars owned by the railroads listed herein, resulting in unnecessary loss of utilization of such cars.

It is ordered, That, pursuant to the authority vested in me by Car Service Rule 19, plain boxcars described in the Official Railway Epuipment Register, ICC-RER No. 406, issued by W. J. Trezise, or successive issues thereof, as having mechanical designation "XM", with inside length 44-ft. 6-in. or less, regardless of door width and bearing reporting marks assigned to the railroads named below, shall be exempt from the provisions of Car Service Rules 1(a), 2(a), and 2(b).

Atlanta & Saint Andrews Bay Railway Co.
Reporting Marks: ASAB
Bessemer and Lake Erie Railroad Co.
Reporting Marks: BLE
Chicago, West Pullman & Southern Railroad Co.
Reporting Marks: CWP
Detroit and Mackinac Railway Co.
Reporting Marks: D&M-DM
Illinois Terminal Railroad Co.
Reporting Marks: ITC
Louisville, New Albany & Corydon Railroad Co.
Reporting Marks: LNAC
*Manufacturers Railway Co.
Reporting Marks: MRS
New Hope and Ivyland Railroad Co.
Reporting Marks: NHIR
Richmond, Fredericksburg and Potomac Railroad Co.
Reporting Marks: RFP

Effective 12:01 a.m., March 15, 1978, and continuing in effect until further order of this Commission.

*Addition.

Issued at Washington, D.C., March 10, 1978.

INTERSTATE COMMERCE COMMISSION,
JOEL E. BURNS,
Agent.

[FR Doc. 78-8823 Filed 4-3-78; 8:45 am]

[7035-01]

[Thirty-Eighth Revised Exemption No. 90]

EXEMPTION UNDER PROVISION OF RULE 19 OF THE MANDATORY CAR SERVICE RULES ORDERED IN EX PARTE NO. 241

To all railroads:

It appearing, That certain of the railroads named below own numerous 50-ft. plain boxcars; that under present conditions, there are substantial surpluses of these cars on their lines; that return of these cars to the owners would result in their being stored idle; that such cars can be used by other carriers for transporting traffic offered for shipments to points remote from the car owners; and that compliance with Car Service Rules 1 and 2 prevents such use of these cars, resulting in unnecessary loss of utilization of such cars; and

**It further appearing,* That there are substantial shortages of 50-ft. plain boxcars throughout the country; that the carriers identified in this exemption by the symbol (†) have 150 percent or more of their ownership of these cars on their lines; and that such a disproportionate use of the total supply of such cars causes shippers served by other lines to be deprived of their proper share of such cars.

It is ordered, That, pursuant to the authority vested in me by Car Service Rule 19, 50-ft. plain boxcars described in the Official Railway Equipment Register, ICC-RER No. 406, issued by W. J. Trezise, or successive issues thereof, as having mechanical designation "XM", and bearing reporting marks assigned to the railroads named below, shall be exempt from provisions of Car Service Rules 1, 2(a), and 2(b).

Apalachicola Northern Railroad Co.
Reporting Marks: AN
Atlanta & Saint Andrews Bay Railway Co.
Reporting Marks: ASAB
†The Baltimore and Ohio Railroad Co.
Reporting Marks: BO
†Bessemer and Lake Erie Railroad Co.
Reporting Marks: BLE
Camino, Placerville & Lake Tahoe Railroad Co.
Reporting Marks: CPLT
†The Chesapeake and Ohio Railway Co.
Reporting Marks: CO-PM
†Chicago & Illinois Midland Railway Co.
Reporting Marks: CIM
†Chicago, Rock Island and Pacific Railroad Co.
Reporting Marks: RI-Rock
City of Prineville
Reporting Marks: COP
The Clarendon and Pittsford Railroad Co.
Reporting Marks: CLP
†Consolidated Rail Corp.
Reporting Marks: CR-DLW-EL-Erie-LV-NH-NYC-P&E-PAE-PC-PCA-PRR-RDG
†Delaware and Hudson Railway Co.
Reporting Marks: DH
†Duluth, Missabe and Iron Range Railway Co.
Reporting Marks: DMIR
†Florida East Coast Railway Co.
Reporting Marks: FEC
†Grand Trunk Western Railroad Co.
Reporting Marks: GTW
Greenville and Northern Railway Co.
Reporting Marks: GRN
Greenwich & Johnsonville Railway Co.
Reporting Marks: GJ
Lake Erie, Franklin & Clarion Railroad Co.
Reporting Marks: LEF
Louisville and Wadley Railway Co.
Reporting Marks: LW
Louisville, New Albany & Corydon Railroad Co.
Reporting Marks: LNAC
McCloud River Railroad Co.
Reporting Marks: MR
Middletown and New Jersey Railway Co., Inc.
Reporting Marks: MNJ
Minneapolis, Northfield and Southern Railway
Reporting Marks: MNS
Municipality of East Troy, Wisc.
Reporting Marks: METW
New Orleans Public Belt Railroad
Reporting Marks: NOPB
†Norfolk and Western Railway Co.
Reporting Marks: ACY-N&W-NKP-WAB
Pearl River Valley Railroad Co.
Reporting Marks: PRV
* * *
Providence and Worcester Co.
Reporting Marks: PW
Raritan River Rail Road Co.
Reporting Marks: RR
Sacramento Northern Railway
Reporting Marks: SN
St. Johnsbury & Lamoille County Railroad
Reporting Marks: SJL
St. Lawrence Railroad
Reporting Marks: NSL
Sierra Railroad Co.
Reporting Marks: SERA
Terminal Railway, Alabama State Docks
Reporting Marks: TASD
Tidewater Southern Railway Co.
Reporting Marks: TS
Toledo, Peoria & Western Railroad Co.
Reporting Marks: TPW
WCTU Railway Co.
Reporting Marks: WCTR
†Western Maryland Railway Co.
Reporting Marks: WM
†Western Railway of Alabama
Reporting Marks: WA
Yreka Western Railroad Co.
Reporting Marks: YW

Effective March 7, 1978, and continuing in effect until further order of this Commission.

Issued at Washington, D.C., March 7, 1978.

INTERSTATE COMMERCE COMMISSION,
JOEL E. BURNS,
Agent.

*Addition.
***Pittsburgh and Lake Erie Railroad Company, deleted.
†Carriers having 150 percent or more of ownership on line.

[FR Doc. 78-8825 Filed 4-3-78; 8:45 am]

[7035-01]

[Notice No. 43TA]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

MARCH 28, 1978.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwide specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 720 (Sub-No. 48TA), filed March 1, 1978. Applicant: BIRD TRUCKING CO., INC., P.O. Box 227, Waupun, WI 53968. Applicant's representative: Wayne W. Wilson, 150 E. Gilman Street, Madison, WI 53703. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Frozen prepared foods and bakery goods,* from the factilities of Stouffer Foods Corp., at or near Cleveland and Solon, OH, to South Bend, IN, Chicago, IL, Milwaukee, Madison, and Barabo, WI, St. Paul, MN, Hopkins, St. Louis Park, and Eden Prairie, MN, and their respective commercial zones. Restriction: Restricted to traffic moving in vehicles equipped with mechanical refrigeration devices, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Stouffer Food Corp., 5750 Harper Road, Solon, OH 44139. (Ronald LF Fugo.) Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

No.MC 26396 (Sub-No. 169TA), filed March 2, 1978. Applicant: POPELKA TRUCKING CO., d.b.a. THE WAGGONERS, P.O. Box 990, Livingston, MT 59047. Applicant's representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Acoustical materials and accessories and materials, accessories and supplies* used in the manufacture thereof, from Plainfield, IL, to CA and to ports of entry on the international boundary line between the United States and Canada in MI and NY, on traffic moving in foreign commerce, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): R. W. Capaul, President, Acoustiflex Corp., 811 Center Street, Plainfield, IL 60544. Send protests to: Paul J. Labane, District Supervisor, Interstate Commerce Commission, 2602 First Avenue North, Billings, MT 59101.

No. MC 30844 (Sub-No. 601TA), filed March 1, 1978. Applicant: KROBLIN REFRIGERATED EXPRESS, INC., 2125 Commercial Street, P.O. Box 5000, Waterloo, IA 50702. Applicant's representative: John P. Rhodes (same address as applicant). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Meats, meat products, and meat byproducts, and articles distributed by meat packinghouses,* as described in sections A and C of appendix I to the report in Descriptions in Motor Carrier Certificates, 61 MCC 209 and 766 (except hides and commodities in bulk), from Independence and Waterloo, IA, to Garner, NC, for 180 days. Supporting shipper(s): Corn Blossom Foods, Independence, IA 50644. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

No. MC 31389 (Sub-No. 242TA), filed March 2, 1978. Applicant: McLEAN TRUCKING CO., P.O. Box 213, Winston-Salem, NC 27102. Applicant's representative: David F. Eshelman, P.O. Box 213, Winston-Salem, NC 27102. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, Commodities in bulk, and those requiring special equipment), between Lynchburg, VA, and Des Moines, IA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Meredith/Burda, Inc., P.O. Box 11829, Lynchburg, VA 24506. Send protests to: Terrell Price, District Supervisor, 800 Briar Creek Road, Room CC516, Mart Office Building, Charlotte, NC 28205.

No. MC 63417 (Sub-No. 131TA), filed March 2, 1978. Applicant: BLUE RIDGE TRANSFER CO., INC., P.O. Box 13447, Roanoke, VA 24034. Applicant's representative: William E. Bain, P.O. Box 13447, Roanoke, VA 24034. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Glass containers, corrugated boxes, caps, covers and tops,* from Brockway, PA, to the NC Counties of Rockingham, Stokes, Caswell, Guilford, Alamance, and Forsythe, and the VA Counties of Pittsylvania, Henry, and Halifax, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers(s): Brockway Glass Co., Inc., McCullough Avenue, Brockway, PA 15824. Send protests to: Irene W. Yost, Secretary, Bureau of Operations, Interstate Commerce Commission, P.O. Box 210, Roanoke, VA 24011.

No. MC 111309 (Sub-No. 13TA), filed March 1, 1978. Applicant: NEWPORT TRUCKING CORP., 4600 Fifth Street, Long Island City, NY 11101. Applicant's representative: A. David Millner and Arthur Liberstein, 167 Fairfield Road, Fairfield, NJ 07006. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Flavoring syrup and compounds* (except in bulk), from Arlington, TX, to all points in the continental United States, under a continuing contract, or contracts, with Pepsi Cola Co., for 150 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers(s): Pepsi Cola Co., Purchase, NY 10577. Send protests to: Maria B. Kejss, Transportation Assistant, Interstate Commerce Commission, 26 Federal Plaza, New York, NY 10007.

No. MC 112520 (Sub-No. 350TA), filed March 2, 1978. Applicant: McKENZIE TANK LINES, INC., P.O. Box 1200, 122 Appleyard Drive, Tallahassee, FL 32302. Applicant's representative: Sol H. Proctor, 1101 Blackstone Building, Jacksonville, FL 32202. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Calcium palmatate,* in bulk, in tank

vehicles, from Port St. Joe, FL, to Bucksport, ME, for 180 days. Supporting shippers(s): Sylvachem Corp., P.O. Box 389, Jacksonville, FL 32201. Send protests to: G. H. Fauss, Jr., District Supervisor, Bureau of Operations, Inerstate Commerce commission, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

No. MC 115496 (Sub-No. 84TA), filed March 1, 1978. Applicant: LUMBER TRANSPORT, INC., P.O. Box 111, Hwy 23 South, Cochran, GA 31014. Applicant's representative: Virgil H. Smith, Suite 12, 1587 Phoenix Boulevard, Atlanta, GA 30349. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Hardwood flooring and hardwood flooring blocks or squares, adhesives, and accessories,* from the facilities of Bruce Hardwood Floors (a Triangle Pacific Co.), at Nashville, TN, to points in FL, AL, and GA, for 180 days. Supporting shipper(s): Bruce Hardwood Floors (a Triangle Pacific Co.), 4255 LBJ Freeway, Dallas, TX 75234. Send protests to: Sara K. Davis, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, 1252 West Peachtree Street NW., Room 300, Atlanta, GA 30309.

No. MC 115654 (Sub-No. 78TA), filed March 1, 1978. Applicant: TENNESSEE CARTAGE CO., INC., P.O. Box 23193, Nashville, TN 37202. Applicant's representative: Henry E. Seaton, 915 Pennsylvania Building, 13th and Pennsylvania Avenue NW., Washington, DC 20004. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Medical, dental, and consumer care products,* from Chattanooga, TN, Nashville, TN, or Cincinnati, OH, to points in KY, and WV, restricted to traffic originating at the facilities of Cutter Laboratories, Inc., at or near Chattanooga, TN, for 180 days. Supporting shipper(s): Cutter Laboratories, Inc., Berkley, CA 94710. Send protests to: Joe J. Tate, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Suite A-422, U.S. Courthouse, 801 Broadway, Nashville, TN 37203.

No. MC 117815 (Sub-No. 275TA), filed March 2, 1978. Applicant: PULLEY FREIGHT LINES, INC., 405 Southeast 20th Street, Des Moines, IA 50317. Applicant's representative: Dewey Marselle (same address as applicant). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Meats, meat products, and meat byproducts, and articles distributed by meat packinghouses,* as described in sections A and C of appendix I to the report in Descriptions in Motor Carrier Certificates, 61 MCC 209 and 766, and (2) *foodstuffs,* when moving in mixed loads with commodities as described in (1) above (except hides and commodities in bulk), from the facilities utilized by Oscar Mayer & Co., at or near Madison, WI, to Chicago, IL, and points in the Chicago commercial zone, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Oscar Mayer & Co., Inc., P.O. Box 7188, Madison, WI 63707. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

No. MC 117815 (Sub-No. 276TA), filed March 2, 1978. Applicant: PULLEY FREIGHT LINES, INC., 405 S.E., 20th Street, Des Moines, IA 50317. Applicant's representative: Dewey Marselle (same address as applicant). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes transporting: *Meats, meat products, meat byproducts, and articles distributed by meat packinghouses,* as described in sections A and C of appendix I to the report in Descriptions in Motor Carrier Certificates, 61 MCC 209 and 766 (except hides and commodities in bulk), from the facilities of or utilized by Swift & Co. at Marshalltown, IA, and Swift & Co., Bookey Packing Division at Des Moines, IA, to points in TN, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Swift & Co., 115 W. Jackson Boulevard, Chicago, IL 60604. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Bldg., Des Moines, IA. 50309.

No. MC 124306 (Sub-No. 42TA), filed March 1, 1978. Applicant: KENAN TRANSPORT CO., INC., P.O. Box 2729, Chapel Hill, NC 27514. Applicant's representative: W. David Fesperman, P.O. Box 2729, Chapel Hill, NC 27514. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes transporting: *Fertilizer and fertilizer materials, anhydrous ammonia, urea and soda ash,* in bulk, in tank or hopper vehicles or dump trucks, from points in Richmond County, GA, to points in SC, NC, VA, WV, KY, and TN, for 180 days. Supporting shipper(s): Columbia Nitrogen Corp., P.O. Box 1483, Augusta, GA 30903. Send protests to: Archie W. Andrews, District Supervisor, Interstate Commerce Commission, 624 Federal Building, 310 New Bern Avenue, P.O. Box 26896, Raleigh, NC 27611.

No. MC 124887 (Sub-No. 49TA), filed March 2, 1978. Applicant: SHELTON TRUCKING SERVICE, INC., Route 1, Box 230, Altha, FL 32421. Applicant's representative: Sol H. Proctor, 1101 Blackstone Building, Jacksonville, FL 32202. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes transporting: *Lumber,* from the plantsites of Louisiana-Pacific Corp., located at West Bay and DeFuniak Springs, FL, to points in AL and GA, for 180 days. Supporting shipper(s): Louisiana-Pacific Corp., P.O. Box 160, West Bay Station, Panama City, FL 32407. Send protests to: G. H. Fauss, Jr., District Supervisor, Bureau of Operations, Interstate Commerce Commission, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

No. MC 125335 (Sub-No. 8TA), filed March 1, 1978. Applicant: GOODWAY, INC., P.O. Box 2283, York, PA 17405. Applicant's representative: Gailyn L. Larsen, P.O. Box 81849, Lincoln, NE 68501. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat byproducts, and articles* distributed by meat packinghouses (except hides and commodities in bulk), from the facilities of Spencer Foods, Inc., at or near Schuyler, NE, to points in NY, NJ, PA and MD, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Spencer Foods, Inc., P.O. Box 544, Schuyler, NE 68661. Send protests to: Charles F. Myers, District Supervisor, Interstate Commerce Commission, P.O. Box 869 Federal Square Station, 228 Walnut Street, Harrisburg, PA 17108.

No. MC 126042 (Sub-No. 5TA), filed March 1, 1978. Applicant: C. ARTHUR FOSSE, d.b.a. FOSSE TRANSPORT, P.O. Box 187, Rothsay, MN 56579. Applicant's representative: Gene P. Johnson, Box 2471, Fargo, ND 58102. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Petroleum products,* in bulk, in tank vehicles, from the facilities of Williams Brothers Pipe Line Co. at West Fargo, ND, to the facilities of Farmers Grain & Mercantile Co., at Rothsay, MN, under a continuing contract or contracts with Farmers Grain & Mercantile Co., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Farmers Grain & Mercantile Co., Rothsay, MN 56579. Send protests to: Ronald R. Mau, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 268 Federal Building and U.S. Post Office, 657 2nd Avenue North, Fargo, ND 58102.

No. MC 134970 (Sub-No. 21TA), filed March 2, 1978. Applicant: UNZICKER TRUCKING, INC., P.O. Box 35, Route No. 24 East, El Paso, IL 61738. Applicant's representative: Michael J.

Ogborn, P.O. Box 82028, Lincoln, NE 68501. Authority sought to operate as a *Common carrier*, by motor vehicle, over irregular routes, transporting: *Canned and preserved foodstuffs*, from the facilities of Heinz, U.S.A., Division of H. J. Heinz Co., at or near Muscatine and Iowa City, IA, to points in IL and those in MO on and east of U.S. Hwy 63, restricted to traffic originating at and destined to the above origins and destinations, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Heinz U.S.A., Division of H. J. Heinz Co., P.O. Box 57, Pittsburgh, PA 15230. Send protests to: Patricia A. Roscoe, Transportation Assistant, Interstate Commerce Commission, Everett McKinley Dirksen Bldg., 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

No. MC 138835 (Sub-No. 25TA), filed March 1, 1978. Applicant: EASTERN REFRIGERATED TRANSPORT, INC., P.O. Box 113, Crozet, VA 22932. Applicant's representative: Harry J. Jordan, 1000 16th Street NW., Washington, DC 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods*, from Seabrook, NJ, to points in PA, OH, IN, IL, KY, MI, Kansas City, MO/KS, restricted to transportation of shipments originating at the facilities of Seabrook Foods, Inc., at Seabrook NJ, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Seabrook Farms Division, Seabrook Foods, Inc., P.O. Box 500, Seabrook ,NJ 08302. Send protests to: Paul D. Collins, District Supervisor, Bureau of Operations, Room 10-502 Federal Building, 400 North 8th Street, Richmond, VA 23240.

No. MC 139850 (Sub-No. 14TA), filed March 1, 1978. Applicant: FOUR STAR TRANSPORTATION, INC., Box 66, Underwood, IA 51576. Applicant's representative: Leonard D. Wilkins (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats*, from Farmland Foods in Denison and Carroll, IA, to points in GA, KY, LA, ME, MD, MA, MS, NH, NJ, NY, NC, OH, PA, RI, SC, TN, VT, VA, and W VA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Farmland Foods, Dean D. Wilson, Traffic Manager, Denison, IA. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Suite 620, 110 North 14th Street, Omaha, NE 68102.

No. MC 141781 (Sub-No. 5TA), filed March 1, 1978. Applicant: LARSON TRANSFER & STORAGE CO., INC., P.O. Box 877, Minneapolis, MN 55440. Applicant's representative: Samuel Rubenstein, 301 North Fifth Street, Minneapolis, MN 55403. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dated periodicals*, from Minneapolis, MN, to Des Moines, IA, and Omaha, NE, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers(s): Triangle Publications, Inc., (TV Guide Division) 2430 Dain Tower, Minneapolis, MN 55402. Send protests to: Delores A. Poe, Transportation Assistant, Interstate Commerce Commission, 414 Federal Building and U.S. Courthouse, 110 South 4th Street, Minneapolis, MN 55401.

No. MC 141958 (Sub-No. 2TA), filed March 2, 1978. Applicant: FEDCO FREIGHTLINES, INC., P.O. Box 422, Route 32 South, Effingham, IL 62401. Applicant's representative: Robert T. Lawley, 300 Reisch Building, Springfield, IL 62701. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in by wholesale, retail, and chain grocery and food business houses, for the account of Procter & Gamble Distributing Co., from the plant and warehouse sites of Procter & Gamble Distributing Co. at Chicago, IL, to points in IN, restricted to movements originating at said plant and warehouse sites, under a continuing contract, or contracts, with the Procter & Gamble Distributing Co., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers(s): R. N. Homleid, Traffic Analyst, the Procter & Gamble Distributing Co., P.O. Box 599, Cincinnati, OH 45201. Send protests to: Charles D. Little, District Supervisor, Interstate Commerce Commission, 414 Leland Office Building, 527 East Capitol Avenue, Springfield, IL 62701.

No. MC 142246 (Sub-No. 3TA), filed March 1, 1978. Applicant: VAN WYK, INC., C Street, Box 443, Sheldon, IA 51201. Applicant's representative: Edward A. O'Donnell, 1004 29th Street, Sioux City, IA 51104. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, meat byproducts, and articles* distributed by meat packing- houses, as described in sections A and C of Appendix I to the Report in Descriptions in Motor Carrier Certificates, 61 MCC 209 and 766 (except hides and commodities in bulk, in tank vehicles), from the facilities of Hawarden of Iowa, Inc., Hawarden, IA, to points and places within the commercial zones of Boston, MA, Chicago, IL, Hartford, CT, Kingston, NY, Schenectady, NY, and Stamford, CT, restricted to a transportation service performed, under a continuing contract, or contracts, with Hawarden of Iowa, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers(s): Dwight D. Duncan, Assistant Manager, Hawarden of Iowa, Inc., 315 West 10th Street, Hawarden, IA 51022. Send protests to: Carroll Russell, District Supervisor, Interstate Commission, Suite 620, 110 North 14th Street, Omaha, NE 68102.

No. MC 143739 (Sub-No. 3TA), filed March 1, 1978. Applicant: SHURSON TRUCKING CO., INC., P.O. Box 147, New Richland, MN 56077. Applicant's representative: William L. Fairbank, 1980 Financial Center, Des Moines, IA 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods* (except commodities in bulk), from points in MN, to points in the States of AR, IL, IN, IA, KS, LA, MI, WI, MO, NE, ND, OH, OK, SD, and TX, for 180 days. Supporting shippers(s): General Foods Corp., 250 North Street, White Plains, NY. Send protests to: Delores A. Poe, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Building and U.S. Courthouse, 110 South 4th Street, Minneapolis, MN 55401.

No. MC 144140 (Sub-No. 5TA), filed March 2, 1978. Applicant: SOUTHERN FREIGHTWAYS, INC., P.O. Box 374, Eustis, FL 32726. Applicant's representative: John L. Dickerson, P.O. Box 374, Hwy 44 West, Euctis, FL 32726. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods and exempt commodities* when moving in the same vehicle with frozen foods, from Empire Freezers of Syracuse at Syracuse, NY, to points in OH and PA, for 180 days. Supporting shipper(s): Empire Freezers of Syracuse, Inc., Farrell Road, Syracuse, NY 13221. Send protests to: G. H. Fauss, Jr., District Supervisor, Bureau of Operations, Interstate Commerce Commission, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

No. MC 144259 (Sub-No. 1TA), filed March 1, 1978. Applicant: JENNARO LINES, INC., 2332 South Peck Road, Whittier, CA 90601. Applicant's representative: Milton W. Flack, 4311 Wilshire Boulevard Los Angeles, CA 90010. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Dessert and beverage preparations*, from the facilities of Jel Sert Co., located at or near West Chicago, IL, to points in CA, CO, NV, TX, NM, MT, and AZ, under a continuing contract, or contracts, with Jel Sert Co., for 180

days. Supporting shipper(s): Jel Sert Co., Hwy 59 and Conde Street, West Chicago, IL 60185. Send protests to: Walter W. Strakosch, District Supervisor, Interstate Commerce Commission, Room 1321, Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012.

No. MC 144384TA, filed March 2, 1978. Applicant: HAROLD W. ANDERSON, d.b.a. ANDERSON TRUCKING, 1122 Fourth Street, Dawson, MN 56232. Applicant's representative: John B. Van de North, Jr., C. O. Briggs & Morgan, 2200 First National Bank Building, St. Paul, MN 55101. Authority sought to operate as a *Common carrier*, by motor vehicle, over irregular routes, transporting: *Soy flakes, soy grits, and soy flour* (except in bulk), from Dawson, MN, to points in IL, IA, WI, IN, TX, MO, OK, for 180 days. Supporting shipper(s): Dawson Mills, Dawson, MN 56232. Send protests to: Delores A. Poe, Transportation Assistant, Interstate Commerce Commission, 414 Federal Building, U.S. Courthouse, 110 South 4th Street, Minneapolis, MN 55401.

No. MC 144386TA, filed March 1, 1978. Applicant: WILLIAM B. BLANEY, JOHN D. BLANEY, Jr., and JAMES M. BLANEY, d.b.a. BLANEY FARMS, R.D. No. 1, Box 218, Perryopolis, PA 15473. Applicant's representative: Wick, Vuono & Lavelle, 2310 Grant Building, Pittsburgh, PA 15219. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Salt and salt products, other than in bulk*, from the facilities of Diamond-Crystal Salt Co., Inc., Akron, OH, to Cumberland, MD, and points in PA, WV, and MD within a 90-mile radius, from Cumberland, MD, under a continuing contract, or contracts, with Diamond-Crystal Salt Co., Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Diamond-Crystal Salt Co., Inc., 916 South Riverside Avenue, St. Clair, MI 48079. Send protests to: J. A. Niggemyer, District Supervisor, Interstate Commerce Commission, 416 Old Post Office Building, Wheeling, WV 26003.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-8819 Filed 4-3-78; 8:45 am]

[7035-01]

[Notice No. 49]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

MARCH 28, 1978.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 409 (Sub-No. 64TA), filed March 8, 1978. Applicant: SCHROETLIN TANK LINE, INC., P.O. Box 511, Saunders Ave. and Hwy 6, Sutton, NE 68979. Applicant's representative: Steven K. Kuhlmann, P.O. Box 82028, Linclon, NE 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid fertilizer*, in bulk, in tank vehicles, from Optic, NE, to points in KS and CO, for 180 days. Supporting shipper: Rodney W. Johnson, Traffic Manager, Nutra-Flow Chemical Co., 1919 Grand Avenue, Sioux City, IA. Send protests to: Max H. Johnston, District Supervisor, 285 Federal Building and Courthouse, 100 Centennial Mall North, Linclon, NE 68508.

No. MC 27368 (Sub-No. 13TA), Filed March 14, 1978. Applicant: FILLIPI TRUCK LINES, INC., Warren, MI 56762. Applicant's representative: Alan Foss, 502 First National Bank Bldg., Fargo, ND 58102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes transporting: *Dry fertilizer and dry fertilizer ingredients*, in bulk, from Grand Forks, ND, to points in MN, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Farmers Union Central Exchange, Inc., a.ka.a. CENEX, P.O. Box 43089, St. Paul, MN 55164. Send protests to: Ronald R. Mau, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 268 Federal Bldg. and U.S. Post Office, 657 2nd Avenue North, Fargo, ND 58102.

No. MC 43246 (Sub-No. 25TA), Filed March 10, 1978. Applicant: BUSKE LINES, INC., 123 West Tyler Avenue, P.O. Box 349, Litchfield, IL 62056. Applicant's representative: Howard Buske (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes transporting: *Glass containers*, from Lincoln, IL, to Scobeyville, NJ, under a continuing contract or contracts with Laird & Co., for 180 days. Supporting shipper: Larrie W. Laird, Laird & Co., Laird Road, Scobeyville, NJ 07724. Send protests to: Charles D. Little, District Supervisor, Interstate Commerce Commission, 414 Leland Office Building, 527 East Capitol Avenue, Springfield, IL 62701.

No. MC 48441 (Sub-No. 17TA), Filed March 15, 1978. Applicant: P. L. & M. EXPRESS, INC., P.O. Box 418, Streator, IL 61364. Applicant's representative: Paul M. Daniell, P.O. Box 872, 235 Peachtree Street NE., Atlanta, GA 30301. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes transporting: Plastic articles (except in bulk), from the facilities of Mobil Chemical Co., Plastics Division, at Frankfort, IL, to points in IA, MN, NE, ND, and SD, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Mobil Chemical Co., Plastics Division, James J. O'Brien, General Traffic Manager, Macedon, NY 14502. Send protests to: Patricia A. Roscoe, Transportation Assistant, Interstate Commerce Commission, Everett McKinley Dirksen Building, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

No. MC 64932 (Sub-No. 583TA), filed March 15, 1978. Applicant: ROGERS CARTAGE CO., 10735 South Cicero Avenue, Oak Lawn IL 60453. Applicant's representative: William F. Farrell (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Calcium chloride*, in bulk, in tank vehicles, from St. Louis, MI, to Copperhill, TN, for 180 days. Supporting shipper: Velsicol Chemical Corp., D. G. Donovan, Manager, District Planning & Development, 341 East Ohio Street, Chicago, IL 60611. Send protests to: Transportation Assistant Patricia A. Roscoe, In-

terstate Commerce Commission, Everett McKinley Dirksen Building, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

No. MC 85934 (Sub-No. 76TA), filed March 13, 1978. Applicant: MICHIGAN TRANSPORTATION CO., 3601 Wyoming Avenue, P.O. Box 248, Dearborn, MI 48120. Applicant's representative: Martin J. Leavitt, 22375 Haggerty Road, P.O. Box 400, Northville, MI 48167. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Muriatic acid*, in bulk, in tank vehicles, from Montague, MI, to Burns Harbor, IN; Argo, Morris and Union, IL; and Ashoppun and Onalaska, WI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Hooker Chemical and Plastics Corp., 222 Rainbow Blvd. North, Box 728, Niagara Falls, NY 14302, Joseph Stasiak, Traffic Specialist. Send protests to: Timothy S. Quinn, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 231 West Lafayette Boulevard, Room 604 Federal Building and U.S. Courthouse, Detroit, MI 48226.

No. MC 99427 (Sub-No. 38TA), filed March 6, 1978. Applicant: ARIZONA TANK LINES, INC., 3200 Ruan Center, P.O. Box 855, Des Moines, IA 50309. Applicant's representative: E. Check (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cottonseed oil*, in bulk, in tank vehicles, from Casa Grande, AZ, to Houston, TX, for 180 days. Supporting shipper: Casa Grande Oil Mill, Casa Grande, AZ 85222. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

No. MC 106674 (Sub-No. 296TA), filed March 15, 1978. Applicant: SCHILLI MOTOR LINES, INC., P.O. Box 123, U.S. Hwy 24 West, Remington, IN 47977. Applicant's representative: Linda J. Sundy, P.O. Box 123, Remington, IN 47977. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles*, from the plantsite of Republic Steel Corp. at Massilon, OH, to points in IN, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Republic Steel Corp., P.O. Box 6778, Cleveland, OH 44101. Send protests to: J. H. Gray, Distric Supervisor, Bureau of Operations, Interstate Commerce Commission, 343 West Wayne Street, Suite 113, Fort Wayne, IN 46802.

No. MC 109478 (Sub-No. 148TA), filed March 13, 1978. Applicant: WORSTER MOTOR LINES, INC., Rural Delivery No. 1, Gay Road, North East, PA 16428. Applicant's representative: Robert D. Dunderman, Suite 710, Statler Hilton, Buffalo, NY 14202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs*, (except in bulk), from the plantsite of Welch Foods, Inc., at Westfield, NY, to all points in VA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Welch Foods, Inc., Westfield, NY. Send protests to: John J. England, District Supervisor, 2111 Federal Building, 1000 Liberty Avenue, Pittsburgh, PA 15222.

No. MC 109689 (Sub-No. 332TA), filed March 14, 1978. Applicant: W. S. HATCH CO., 643 South 800 West, Woods Cross, UT 84087. Applicant's representative: Mark K. Boyle, 345 South State Street, Salt Lake City, UT 84111. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Montmorillonite clay*, in slurry, in bulk, from Imvite, Nye County, NV, to CA, ID, and OR, for 180 days. Supporting shipper: Industrial Minerals Ventures, Inc., 5920 McIntyre Street, Golden, CO 80501 (Frank P. Schmitz, Traffic Manager). Send protests to: District Supervisor Lyle D. Helfer, Interstate Commerce Commission, Bureau of Operations, 5301 Federal Building, 125 South State Street, Salt Lake City, UT 84138.

No. MC 111231 (Sub-No. 230TA), filed March 14, 1978. Applicant: JONES TRUCK LINES, INC., 610 East Emma Avenue, Springdale, AR 72764. Applicant's representative: Kim D. Mann, 7101 Wisconsin Avenue, Suite 1010, Washington, DC 20014. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Birmingham, AL, and Meridian, MS, over Interstate Hwy 20, serving no intermediate points, but serving points in the commercial zones of Birmingham and Meridian, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): There are approximately (90) statements of support attached to the application which may be examined at the Interstate Commerce Commission in Washington, DC, or copies thereof which may be examined at the field office named below. Send protests to: William H. Land, Jr., District Supervisor, 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

No. MC 111401 (Sub-No. 514TA), filed March 8, 1978. Applicant: GROENDYKE TRANSPORT, INC., 2510 Rock Island Boulevard, P.O. Box 632, Enid, OK 73701. Applicant's representative: Victor R. Comstock (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid fertilizer solutions*, in bulk, in tank vehicles, from Blair, NE, to points in TX, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Terra Chemical International, Inc., P.O. Box 1828, Sioux City, IA 51102. Send protests to: Connie Stanley, Transportation Assistant, Room 240, Old Post Office and Courthouse Building, 215 Northwest Third, Oklahoma City, OK 73102.

No. MC 113666 (Sub-No. 125TA), filed March 13, 1978. Applicant: FREEPORT TRANSPORT, INC., 1200 Butler Road, Freeport, PA 16229. Applicant's representative: Daniel R. Smetanick (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber*, from ports of entry between the United States and Canada located in Buffalo and Niagara Falls, NY, to points in DE, MD, NJ, NY, OH, PA, VA, WV and DC, restricted to shipments originating at the plantsite or storage facilities of Huron Forwarding Ltd. (Lumber Division), located in St. Catharines, ON, Canada, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Huron Forwarding Ltd., St. Catharines, ON, Canada. Send protests to: John J. England, District Supervisor, 2111 Federal Building, 1000 Liberty Avenue, Pittsburgh, PA 15222.

No. MC 114457 (Sub-No. 360TA), filed March 8, 1978. Applicant: DART TRANSIT CO., 2102 University Avenue, St. Paul, MN 55114. Applicant's representative: James H. Wills (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Metal containers*, from LaPorte, IN, to Oklahoma City and Tulsa, OK; Omaha, NE; and Sioux City, IA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: National Can Corp., 8101 West Higgins Road, Chicago, IL 60631. Send protests to: Delores A. Poe, Transportation Assistant, Interstate Commerce Commission, 414 Federal Building and U.S. Courthouse, 110 South 4th Street, Minneapolis, MN 55401.

No. MC 114457 (Sub-No. 361TA), filed March 8, 1978. Applicant: DART TRANSIT CO., 2102 University Avenue, St. Paul, MN 55114. Applicant's representative: James H. Wills

(same address as applicant). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Barrel staves,* from St. Paul, MN, to Kansas City, MO; Chicago, IL; and Cleveland, OH, for 180 days. Supporting shipper: Greif Brothers Corp., 1821 University Avenue, St. Paul, MN 55114. Send protests to: Delores A. Poe, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Building and U.S. Courthouse, 110 S. 4th Street, Minneapolis, MN 55401.

No. MC 114725 (Sub-No. 84TA), filed March 13, 1978. Applicant: WYNNE TRANSPORT SERVICE, INC., 2222 North 11th Street, Omaha, NE 68110. Applicant's representative: Don Swerczek (same address as applicant). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Liquid fertilizer,* in bulk, in tank vehicles, from Blair, NE, to IA, MN, ND, SD, WI, and IL, for 180 days. Supporting shipper: James A. Frady, Traffic Coordinator, Terra Chemicals International, Inc., P.O. Box 1828, Sioux City, IA 51102. Send protests to: Carrol Russell, District Supervisor, Interstate Commerce Commission, Suite 620, 110 North 14th St., Omaha, NE 68102.

No. MC 116763 (Sub-No. 408TA), filed March 20, 1978. Applicant: CARL SUBLER TRUCKING, INC., North West Street, Versailles, OH 45380. Applicant's representative: H. M. Richters (Same address as applicant). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Foodstuffs* (except frozen, and in bulk, in tank vehicles), from the facilities of Campbell Soup Co. at or near Chicago, IL, to points in AL, FL, GA, NC, SC, and TN, for 180 days. Supporting shipper(s): Campbell Soup Co., Andrew Burce, Director—Distribution, Campbell Place, Camden, NJ 08101. Send protests to: Paul J. Lowry, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 5514B Federal Building, 550 Main Street, Cincinnati, OH 45202.

No. MC 116254 (Sub-No. 199TA), filed March 16, 1978. Applicant: CHEM-HAULERS, INC., P.O. Box 339, Florence, AL 35630. Applicant's representative: Randy C. Luffman, Traffic Mgr., Chemical Division, (address same as above). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Coal tar,* in bulk, in tank vehicles, from Granite City, IL, to Birmingham, AL, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Koppers Co., Inc., P.O. Box 752, Bessemer, AL 35020. Send protests to: Mabel E. Holston, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, Room 1616, 2121 Building, Birmingham, AL 35203.

No. MC 118838 (Sub-No. 20TA), filed March 15, 1978. Applicant: GABOR TRUCKING, INC., Rural Route 4, Box 124B, Detroit Lakes, MN 56501. Applicant's representative: Richard P. Anderson, 502 First National Bank Bldg., Fargo, ND 58102. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Lumber,* from the international boundary line between the United States and Canada located at Noyes, MN and Pembina, ND, to points in ND, SD, IA, MN, WI, and IL, restricted to traffic moving from the facilities utilized by Manitoba Forest Resources, Ltd., located in the province of MB, Canada, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Manitoba Forest Industries, Ltd., Room 902, 913 Notre Dame Street, Winnipeg, MB, Canada. Send protests to: Donald R. Mau, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 628 Federal Building and U.S. Post Office, 657 2nd Avenue North, Fargo, ND 58102.

No. MC 119493 (Sub-No. 186TA), filed March 15, 1978. Applicant: MONKEM CO., INC., P.O. Box 1196, West 20th Street Road, Joplin, MO 64801. Applicant's representative: Lawrence F. Kloeppel, P.O. Box 1196, Joplin, MO 64801. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Absorbent clay products,* from Mounds, IL to points in AL, AR, GA, IA, IN, KS, KY, LA, MI, MN, MO, NE, NY, NJ, OH, OK, TX, WV, WI, and (2) *materials and supplies* used in the manufacture, processing, and distribution thereof, from named destinations, to Mounds, IL, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Absorbent Clay Products, Inc., P.O. Box 687, 200 N. Main, Anna, IL 62906. Send protests to: John V. Barry, District Supervisor, Interstate Commerce Commission, 600 Federal Building, 911 Walnut Street, Kansas City, MO 64106.

No. MC 119789 (Sub-No. 433TA), filed February 23, 1978. Applicant: CARAVAN REFRIGERATED CARGO, INC., P.O. Box 6188, Dallas, TX 75222. Applicant's representative: James K. Newbold, Jr., P.O. Box 6188, Dallas, TX 75222. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Malt beverages and related advertising materials,* from Eden, NC, to points in the States of AL, FL, GA, KY, MS, LA, TN, and TX, and (2) *materials, equipment, and supplies* used in the manufacture, sale, and distribution of malt beverages, and *returned empty malt beverage containers* (except commodities in bulk), from points in the States of AL, FL, GA, KY, MS, LA, TN, and TX, to Eden, NC, and (3) *malt beverages and related advertising materials,* between Eden, NC and Fort Worth, TX, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Miller Brewing Co., 3939 W. Highland Boulevard, Milwaukee, WI 53208. Send protests to: Opal M. Jones, Transportation Assistant, Interstate Commerce Commission, 1100 Commerce Street, Room 13C12, Dallas, TX 75242.

No. MC 121060 (Sub-No. 56TA), filed March 16, 1978. Applicant: ARROW TRUCK LINES, INC., P.O. Box 1416, 1220 West 3d Street, Birmingham, AL 35207. Applicant's representative: William P. Jackson, Jr., Attorney, P.O. Box 1240, Arlington, VA 22210. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Steel bars,* from the facilities of Illinois-Birmingham Bolt Co. at Kankakee, IL, to points in PA, WV, KY, VA, TN, AL, TX, and OH, for 180 days. Supporting shipper(s): Illinois-Birmingham Bolt Co., P.O. Box 1208, Birmingham, AL 35201. Send protests to: Mable E. Holston, Transportation Assistant, Interstate Commerce Commission, Room 1616, 2121 Building, Birmingham, AL 35203.

No. MC 121509 (Sub-No. 7TA), filed March 15, 1978. Applicant: DAUFELDT TRANSPORT, INC., 618 Clay Street, P.O. Box 675, Muscatine, IA 52761. Applicant's representative: William L. Fairbank, 1980 Financial Center, Des Moines, IA 50309. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Liquid feed ingredient molasses,* from Muscatine, IA, to points in IL, MO, and WI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Industrial Molasses Division, Westway Trading Corp., 6600 France Avenue North, Minneapolis, MN 55435. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

No. MC 123255 (Sub-No. 141TA), filed March 8, 1978. Applicant: B&L MOTOR FREIGHT, INC., 140 Everett Avenue, Newark, OH 43055. Applicant's representative: C. F. Schnee, Jr. (same address as applicant). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular

routes, transporting: *Pulpboard, printing paper, and wrapping paper,* from facilities of Union Camp Corp. at or near Franklin, VA, to IL, IN, KY, MI, OH, and WI, for 180 days. Supporting shipper: Union Camp Corp., 1600 Valley Road, Wayne, N.J. 07470. Send protests to: Frank L. Calvary, District Supervisor, Interstate Commerce Commission, 220 Federal Building and U.S. Courthouse, 85 Marconi Boulevard, Columbus, OH 43215.

No. MC 123819 (Sub-No. 54TA), filed March 16, 1978. Applicant: ACE FREIGHT LINE, INC., 3359 Cazassa Road, P.O. Box 16589, Memphis, TN 38116. Applicant's representative: Mr. Bill R. Davis, Suite 101, Emerson Center, 2814 New Spring Road, Atlanta, GA 30339. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Spent phosphoric acid,* in bulk, in tank vehicles from Union City, TN, to points in LA, and MS, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Apache Chemical Co., Suite 215, 11211 Katy Freeway, Houston, TX 77079. Send protests to: Mr. Floyd A. Johnson, District Supervisor, Interstate Commerce Commission, 100 North Main Building, Suite 2006, 100 North Main Street, Memphis, TN 38103.

No. MC 123885 (Sub-No. 25TA), filed February 21, 1978. Applicant: C&R TRANSFER CO., P.O. Box 1010, Rapid City, SD 57701. Applicant's representative: James W. Olson, 821 Columbus, P.O. Box 1552, Rapid City, SD 57709. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Concrete products,* and (2) *concrete products* (except concrete pipe, concrete cattle underpasses, and concrete manholes), (1) from Sioux Falls, SD, to Lyon, Sioux, Plymouth, Woodbury, Monona, Osceola, O'Brien, Cherokee, Dickinson, Clay, and Ida Counties in IA, and Pipestone, Rock, Nobles, and Jackson Counties in MN, and (2) from Canton, SD, to Lyon, Sioux, Plymouth, Woodbury, Monona, Osceola, O'Brien, Cherokee, Dickinson, Clay, and Ida Counties in IA, and Pipestone, Rock, Nobles, and Jackson Counties, in MN, for 180 days. Supporting shipper(s): (1) Gage Bros. Concrete Products, Inc., P.O. Box 1526, Sioux Falls, SD 57101 (Glen B. Reinholt Traffic Manager); (2) Canton Concrete Products Corp., P.O. Box 258, Canton, SD 57013 (George Kamanar Office and Production Manager). Send protests to: J. L. Hammond, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 455, Federal Building, Pierre, SD 57501.

No. MC 124174 (Sub-No. 116TA), filed March 7, 1978. Applicant: MOMSEN TRUCKING CO., 13811 "L" Street, Omaha, NE 68137. Applicant's representative: Karl E. Momsen (same address as applicant). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Cellulose fiber insulation,* from Oskaloosa, IA, to all points in KS, MO, IL, MN, ND, and SD, for 180 days. Supporting shipper: L. R. Weaner, Transportation Manager, U.S. Fiber Corp., 101 South Main Street, Delphos, OH 45833. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Suite 620, 110 North 14th Street, Omaha, NE 68102.

No. MC 124511 (Sub-No. 44TA), filed March 6, 1978. Applicant: OLIVER MOTOR SERVICE, INC., P.O. Box 223, East Highway 54, Mexico, MO 65265. Applicant's representative: Leonard R. Kofkin, 39 South LaSalle Street, Chicago, IL 60603. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Steel articles,* from Madison, IL, to points in MO, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Southwest Steel Supply Co., Inc., 3401 Morganford Road, St. Louis, MO 63116. Send protests to: Vernon V. Coble, District Supervisor, Interstate Commerce Commission, 600 Federal Building, 911 Walnut Street, Kansas City, MO 64106.

No. MC 127187 (Sub-No. 34TA), filed March 14, 1978. Applicant: FLOYD DUENOW, INC., 1728 Industrial Park Boulevard, Fergus Falls, MN 56537. Applicant's representative: Greg C. Johnson, 1728 Industrial Park Boulevard, Fergus Falls, MN 56537. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Agricultural chemicals* (except in bulk) from Fort Dodge, IA, to points in MN, NE, and WI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Land O'Lakes Agricultural Services Division, 2827 8th Avenue South, Fort Dodge, IA 50501. Send protests to: Ronald R. Mau, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 268, Federal Building and U.S. Post Office, 657 2d Avenue North, Fargo, ND 58102.

No. MC 127303 (Sub-No. 36TA), filed March 15, 1978. Applicant: ZELLMER TRUCK LINES, INC., P.O. Box 343, Granville, IL 61326. Applicant's representative: E. Stephen Heisley, 666 11th Street NW., No. 805, Washington, DC 20001. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Glass containers and container accessories,* from the facilities of Kerr Glass Manufacturing Corp., located at or near Dunkirk, IN, to Des Moines, Cedar Rapids, and Marion, IA, and Independence and St. Louis, MO, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Kerr Glass Manufacturing Corp., Larry W. Wilson, Assistant General Traffic Manager, Box 97, Sand Springs, OK 74063. Send protests to: Patricia A. Roscoe, Transportation Assistant, Interstate Commerce Commission, Everett McKinley Dirksen Building, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

No. MC 128527 (Sub-No. 105TA), filed March 17, 1978. Applicant: MAY TRUCKING CO., P.O. Box 398, Fayette, ID 83701. Applicant's representative: Timothy R. Stivers, P.O. Box 162, Boise, ID 83701. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Hides,* (1) from points in MT, ND, SD, NE, KS, MN, WI, IA, MO, OK, TX, NM, CO, AZ, UT, NV, WY, ID, CA, OR, and WA, to points in IN, OR, WA, and CA; and (2) from Boise, ID, and Clovis, NM, and points in their respective commercial zones to points in TX, for 180 days. Applicant does not intend to tack or interline authority. Supporting shipper: Southwest Hide Co., P.O. Box 7553, Boise, ID 83707. Send protests to: Barney L. Hardin, District Supervisor, Interstate Commerce Commission, Suite 110, 1471 Shoreline Drive, Boise, ID 83706.

No. MC 129219 (Sub-No. 13TA), filed March 13, 1978. Applicant: CMD TRANSPORTATION, INC., 12340 Southeast Dumolt Road, Clackamas, OR 97015. Applicant's representative: Philip G. Skofstad, P.O. Box 594, Gresham, OR 97030. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Newsprint paper in rolls,* from Oregon City and Newberg, OR, to Los Angeles, CA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Publishers Paper Co., 419 Main Street, Oregon City, OR 97045. Send protests to: District Supervisor, A. E. Odoms, Bureau of Operations, Interstate Commerce Commission, 114 Pioneer Courthouse, 555 Southwest Yamhill Street, Portland, OR 97202.

No. MC 129862 (Sub-No. 18TA), filed March 14, 1978. Applicant: RAJOR, INC., 2 Lewisburg Pike, P.O. Box 756, Franklin, TN 37064. Applicant's representative: William J. Monheim, 13710 East Whittier Boulevard, P.O. Box 1756, Suite 203, Whittier, CA 90609. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Air conditioning and heating units,* (except

commodities which because of size or weight require the use of special equipment), from Davidson County, TN, to points in AZ, CA, CO, IA, MT, NE, NV, ND, OR, SD, UT, and WA, under a continuing contract, or contracts, with Heil Quaker Corp., for 180 days. Applicant has also filed and undrlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Heil Quaker Corp., 1714 Heil Quaker Boulevard, Davidson County, TN (LaVergne, TN 37086). Send protests to: Joe J. Tate, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Suite A-422, U.S. Courthouse, 801 Broadway, Nashville, TN 37203.

No. MC 133735 (Sub-No. 4TA), filed March 10, 1978. Applicant: AUDUBON TRANSPORT, INC., Wever, IA 52658. Applicant's representative: Larry D. Knox or Richard D. Howe, 600 Hubbell Building, Des Moines, IA 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fertilizer* from the facilities of Merschman Seed & Fertilizer, Inc., at or near Fort Madison, IA to points in IL and MO, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Joe Merschman, Operations Manager, Merschman Seed & Fertilizer, Inc., P.O. Box 67, West Point, IA 52656. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Suite 620, 110 North 14th St., Omaha, NE 68102.

No. MC 134114 (Sub-No. 7TA), filed March 15, 1978. Applicant: NEBRASKA BEEF EXPRESS, INC., 4440 Buckingham Avenue, Omaha, NE 68107. Applicant's representative: Kenneth P. Weiner, 608 Executive Building, Omaha, NE 68102. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Meats*, (except commodities in bulk and hides), from Omaha, NE, to Eau Claire, WI, Byron Center, MI; and Cedar Rapids, IA, to points in their respective commercial zones, under a continuing contract, or contracts, with Cornhusker Packing Co., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Mike Sherman Superintendent of Plant, Cornhusker Packing Co., 4436 Dahlman Boulevard, Omaha, NE 68107. Send protests to: Carroll Russell District Supervisor, Interstate Commerce Commission, Suite 620, 110 North 14th Street, Omaha, NE 68102.

No. MC 134286 (Sub-No. 47TA), filed March 13, 1978. Applicant: ILLINI EXPRESS, INC., P.O. Box 1564, Sioux City, IA 51102. Applicant's representative: Charles J. Kimball, Suite 350, Capitol Life Center, 1600 Sherman Street, Denver, CO 80203. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen bagels* (except commodities in bulk), from the facilities of Lender's Bagel Bakery/Abel's Bagels located at or near Buffalo, NY, to Chicago, IL, to St. Louis and Kansas City, MO; Kansas City, KS; Minneapolis, MN; Denver, CO; Milwaukee, WI; Omaha, NE; and all points in the respective commercial zones of each city named above, and points in the states of PA, OH, IN, TX, and MI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Sam Solodky, Chief Executive Officer, Lender's Bagel Bakery/Able's Bagels, 75 Empire Drive, Buffalo, NY 14224. Send protests to: Carroll Russell District Supervisor, Interstate Commerce Commission, Suite 620, 110 North 14th Street, Omaha, NE 68102.

No. MC 134286 (Sub-No. 48TA), filed March 14, 1978. Applicant: ILLINI EXPRESS, INC., P.O. Box 1564, Sioux City, IA 51102. Applicant's representative: Charles J. Kimball, Suite 350, Capitol Life Center, 1600 Sherman Street, Denver, CO 80203. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry spaghetti and macaroni products* except in bulk, from the facilities of C. F. Mueller Co. located at or near Jersey City, NJ, to IN, MI and OH, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Roy J. Rebbel, Director of Distribution, C. F. Mueller Co., 180 Baldwin Avenue, Jersey City, NJ 07306. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Suite 620, 110 North 14th St., Omaha, NE 68102.

No. MC 134323 (Sub-No. 102TA), filed March 16, 1978. Applicant: JAY LINES, INC., 720 North Grand Street, Amarillo, TX 79107. Applicant's representative: Gailyn Larsen, 521 South 14th Street, Lincoln, NE. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Chemicals* (except in bulk), from Morrestown, NJ (Burlington County) to Houston and Lubbock, TX, Pasco, WA, and Phoenix, AZ, under a continuing contract or contracts with Union Carbide Corp., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Union Carbide Corp., 270 Park Avenue, New York, NY 10017. Send protests to: Haskell E. Ballard, District Supervisor, Interstate Commerce Commission—Bureau of Operations, Box H-4395 Herring Plaza, Amarillo, TX 79101.

No. MC 134405 (Sub-No. 46TA), filed March 13, 1978. Applicant: BACON TRANSPORT CO., P.O. Box 1134, Ardmore, OK 73401. Applicant's representative: Wilburn L. Williamson, 280 National Foundation Life Building, 3535 NW. 58th Street, Oklahoma City, OK 73112. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Crude tall oil*, in bulk, from Valliant, OK, to Hattiesburg, MI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Weyerhauser Co. P.O. Drawer C, Valliant, OK 74764. Send protests to: Connie Stanley, Transportation Assistant, Room 240 Old Post Office and Courthouse Building, 215 NW. 3rd, Oklahoma City, OK 73102.

No. MC 135381 (Sub-No. 6TA), filed March 16, 1978. Applicant: DRUM TRANSPORTATION CO., R.D. No. 1, Montgomery, PA 17752. Applicant's representative: J. G. Dail, Jr., P.O. Box 567, McLean, VA 22101. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Wooden poles, posts, pilings, timbers, ties, crossarms, and laminated wooden beams*, between the facilities of Southern Wood Piedmont Co. at or near Wavely, OH, and at or near Charleston, WV, on the one hand, and, on the other, points in AL, CT, DE, GA, KY, MA, ME, MD, NH, NJ, NY, NC, OH, PA, RI, SC, TN, VA, VT, WV, and DC. Restriction: Restricted to a transportation service to be performed under a continuing contract or contracts with Southern Wood Piedmont Co., Atlanta, GA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Southern Wood Piedmont Co., P.O. Box 5447, Spartanburg, SC 29304. Send protests to: Paul J. Kenworthy, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 314 U.S. Post Office Building, Scranton, PA 18503.

No. MC 135797 (Sub-No. 107TA), filed March 14, 1978. Applicant: J. B. HUNT TRANSPORT, INC., P.O. Box 200, U.S. Hwy 71, Lowell, AR 72745. Applicant's representative: Paul A. Maestri, P.O. Box 200, Lowell, AR 72745. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wire tire cord, steel*, from the plantsite of National-Standard Co., Stillwater, OK, to Mount Joy, PA; *reels or spools, steel* from the plantsite of National-Standard Co., Stillwater, OK, to Detroit, MI; Mount Joy, PA, and Columbiana, AL, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): National-Standard Co., P.O. Box 867, 3602 North

Perkins Road, Stillwater, OK 74074. Send protests to: William H. Land, Jr., District Supervisor, 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

No. MC 136247 (Sub-No. 13TA), filed March 17, 1978. Applicant: WRIGHT TRUCKING, INC., P.O. Box 346, 409, 17th Street SW., Jamestown, ND 58401. Applicant's representative: Richard P. Anderson, 502 First National Bank Building, Fargo, ND 58102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages and articles* dealt in by wholesale beverage distributors from Peoria, IL, to points in ND on and west of ND Hwy 1, for 180 days. Applicant has also filed an underlying ETA seeking up tp 90 days of operating authority. Supporting shipper(s): There are approximately 4 statements of support attached to the application which may be examined at the field office named below. Send protests to: Ronald R. Mau, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 268 Federal Building and U.S. Post Office, 657 2nd Avenue North, Fargo, ND 58102.

No. MC 138253 (Sub-No. 9TA), filed March 16, 1978. Applicant: MONFORT TRANSPORTATION CO., P.O. Box G, Greeley, CO 80631. Applicant's representative: John T. Wirth, 1600 Broadway, 2310 Colorado State Bank Building, Denver, CO 80202. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods* from the facilities of Stouffer Foods at or near Solon and Cleveland, OH, to points in CA, under a continuing contract or contracts with Stouffer Foods, for 180 days. No tack or interline. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Stouffer Foods, 5750 Harper Road, Solon, OH 44139. Send protests to: District Supervisor, Roger L. Buchanan, Interstate Commerce Commission, 492 U.S. Customs House, 721 19th Street, Denver, CO 80202.

No. MC 139495 (Sub-No. 329TA), filed March 13, 1978. Applicant: NATIONAL CARRIERS, INC., P.O. Box 1358, 1501 East Eighth Street, Liberal, KS 67901. Applicant's representative: Herbert Alan Dubin, Sullivan, Dubin & Kingsley, 1320 Fenwick Lane, Silver Spring, MD 20910. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Food, cosmetic, drug, industrial, and scientific chemicals, and related laboratory instruments and kits* (except commodities in bulk, in tank vehicles), from the facilities of Mallinckrodt, Inc., located at or near Paris, KY, to McGaw Park, IL, Edison, Jersey City, and North Bergen, NJ, New Haven, CT, Providence, RI, Bedford and Boston, MA, and Atlanta, GA, for 180 days. Supporting shipper(s): Mallinckrodt, Inc., 657 Brown Road, St. Louis, MO 63134. Send protests to: M. E. Taylor, District Supervisor, Interstate Commerce Commission, 101 Litwin Building, Wichita, KS 67202.

No. MC 140829 (Sub-No. 83TA), filed March 6, 1978. Applicant: CARGO CONTRACT CARRIER CORP., P.O. Box 206, U.S. Hwy 20, Sioux City, IA 51102. Applicant's representative: William J. Hanlon, 55 Madison Avenue, Morristown, N.J. 07960. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs* from the facilities of C. F. Mueller Co., at or near Jersey City, NJ, to points in MI and OH, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Roy J. Rebbel, Director of Transportation, C. F. Mueller Co., 180 Baldwin Avenue, Jersey City, NJ 07306. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Suite 620, 110 North 14th Street, Omaha, NE 68102.

No. MC 141532 (Sub-No. 20TA), filed March 14, 1978. Applicant: PACIFIC STATES TRANSPORT, INC., 35433 16th Avenue South, Federal Way, WA 98002. Applicant's representative: Henry C. Winters, 235 Evergreen Building, Renton, WA 98055. Authority sought to operate as a *1common carrier*, by motor vehicle, over irregular routes, transporting: *Aluminum ingots, pigs, billets and slabs*, from Longview, WA, and Troutdale, OR, to points in CA, for 180 days. Supporting shipper: Reynolds Metals Co., P.O. Box 999, Longview, WA 98632. Send protests to: Hugh H. Chaffee, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 858 Federal Building, Seattle, WA 98174.

No. MC 143514 (Sub-No. 2TA), filed March 10, 1978. Applicant: ROBERT L. AND WANDA S. WELBORN, doing business as ORIENT EXPRESS, 4322 West Greenway Road, Glendale, AZ 85306. Applicant's representative: A. Michael Bernstein, 1441 East Thomas Road, Phoenix, AZ 85014. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Restaurant and institutional food, supplies and equipment*, between points in AZ, NV, and CA, for 180 days. Supporting shippers: There are approximately (7) statements of support attached to the application which may be examined at the field office named below. Send protests to: Andrew V. Baylor, District Supervisor, Interstate Commerce Commission, Room 2020, Federal Building, 230 North First Avenue, Phoenix, AZ 85025.

No. MC 143659 (Sub-No. 3TA), filed March 10, 1978. Applicant: VALLEY TRUCKING, INC., Rural Route No. 2, Box 55, Fargo, ND 58102. Applicant's representative: Edward A. O'Donnell, 1004 28th Street, Sioux City, IA 51104. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Potato products*, from the facilities of International Co-op, Grand Forks, ND, to points in AZ, AR, CA, CO, ID, IL IN, IA, KS, KY, MI MN, MO, MT, NE, NV, OH, OK, OR, SD, TN, UT, WA WI, and WY, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): International Co-op, Hwy 2, Grand Forks, ND 58201. Send protests to: Ronald R. Mau, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 268, Federal Building and U.S. Post Office, 657 Second Avenue, North, Fargo, ND 58102

No. MC 143731 (Sub-No. 1TA), filed March 20, 1978. Applicant: DONNIS BARNES (BARNES TRANSPORT), Route 1, Box 249, Monroeville, AL 36460. Applicant's representative: Same as above. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wood residuals; wood sawdust, chips, and shavings* from Crestview, FL, to Monroeville, AL, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Olinkraft, Inc., P.O. Box 488, West Monroe, LA 71291. Send protests to: Mabel E. Holston, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, Room 1616, 2121 Building, Birmingham, AL 35203.

No. MC 143783 (Sub-No. 1TA), filed March 15, 1978. Applicant: WILLIAM FROST, d.b.a. FROST TRUCK SERVICE, 1911 Locust Street, St. Louis, MO 63103. Applicant's representative: Ernest A. Brooks, II, 1301 Ambassador Building, St. Louis, MO 63101. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Styrofoam*, from St. Louis, MO, to points in MS, AR, TN, KY, IN, IL, IA, MO, KS, OK, and OH, under a continuing contract, or contracts with Foam Fabricators, Inc.; (2) *polyester fiber*, from St. Louis, MO, to points in MS, AR, TN, KY, IN, IL, IA, MO, KS, OK, and OH, under a continuing contract, or contracts with Mid America Fiber Co.; (3) *fiberglass insulation*, from St. Louis, MO, to points in MS, AR, TN, KY, IN, IL, IA, MO, KS, OK, and OH, under a continuing contract, or contracts with Central Glass Insulation, Inc., and (4) *plastic containers*, from Chicago, IL, to St. Louis, MO, under a continuing contract, or contracts with C. L. Smith Co., for 180 days. Supporting

shipper(s): Foam Fabricators, Inc., 316 South 16th Street, St. Louis, MO 63103; Mid America Fiber Co., 4193 Beck Street, St. Louis, MO 63116; Central Glass Insulations, Inc., 13743 Rider Trail, Earth City, MO 63045; C. L. Smith Co., 1311 South 39th Street, St. Louis, MO 63110. Send protests to: Peter F. Binder, District Supervisor, Interstate Commerce Commission, 210 North 12th Street, Room 1465 St. Louis, MO 63101.

No. MC 144246 (Sub-No. 2TA), filed March 9, 1978. Applicant: LARSEN TRUCKING, INC., 7703 Sunset Street, Ralston, NE 68127. Applicant's representative: Douglas Larsen (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fresh meats*, from the plantsite of Dugdale Packing Co. at or near Darr, NE, to Webster City, IA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Darold E. Mapes, Traffic Manager, Dugdale Packing Co., P.O. Box 166, Cozad, NE 69130. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Suite 620, 110 North 14th Street, Omaha, NE 68102.

No. MC 144300 (Sub-No. 4TA), filed March 14, 1978. Applicant: J&D TRUCKING, INC., 2985 Meadow Avenue, P.O. Box 1610, Fort Myers, FL 33902. Applicant's representative: William P. Jackson, Jr., 3426 North Washington Boulevard, P.O. Box 1240, Arlington, VA 22210. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Synthetic carpet backing*, from the facilities of Synthetic Industries, Inc., at or near Chickamauga and Dalton, GA, to points in Los Angeles, CA, and the Los Angeles, CA, commercial zone. Restriction: Restricted to the transportation of shipments, under a continuing contract, or contracts with Synthetic Industries, Inc., for 180 days. There is no environmental impact involved in this application. Supporting shipper(s): Synthetic Industries, Inc., 309 LaFayette Road, Chickamauga, GA 30707. Send protests to: Donna M. Jones, Transportation Assistant, Interstate Commerce Commission, Monterey Building, Suite 101, 8410 Northwest 53d Terrace, Miami, FL 33166.

No. MC 144412TA, filed February 28, 1978. Applicant: PHOTO EXPRESS, INC., 2300 Higgins Road, Elk Grove Village, IL 60007. Applicant's representative: Stuart T. Edelstein, 134 North La Salle Street, Chicago, IL 60602. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Corrosive Liquid Noi., Poisonous Liquid Noi., Poisonous Solid Noi., Flammable Solid Noi., Flammable Liquid Noi., Oxidizing Material Noi., Irritating Agent Noi., Flammable Gas Noi., Chemicals Noibn., Unexposed Photo Paper, Unexposed Photo Film, Photo Printing Plates, Unexposed Photo Dry Plates, Glass, Photo Printing Plates, Advertising Matter Noi., Matrix Paper, Surface Coated Paper, Copying, Duplicating or Reproducing Machines, Camera and Camera outfits, Magnetic Tapes Blank Noi.*, in boxes, barrels, bags, not in bulk, from Chicago, IL, to the States of MI, IN, KY, OH, MO, KS, NE, IA, SD, ND, MN, WI, IL, on the one hand, and from these States of Chicago, IL, under a continuing contract, or contracts, with AGFA Gevaert, Inc., for 180 days. Supporting shipper(s): AGFA Gevaert, Inc., Paul W. Weber, Traffic Manager, 275 North Street, Teterboro, NJ 07608. Send protests to: Patricia A. Roscoe, Transportation Assistant, Interstate Commerce Commission, Everett McKinley Dirksen Building, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

No. MC 144435 (Sub-No. 1TA), filed March 14, 1978. Applicant: J&L REFRIGERATED SERVICE, INC., 312 Willow Way, Lee's Summit, MO 64063. Applicant's representative: Clyde N. Christey, Kansas Credit Union Building, Suite 110 L, 1010 Tyler, Topeka, KS 66612. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, meat byproducts, and articles distributed by meat packinghouses*, as described in sections A and C of Appendix I to the Report and Descriptions in Motor Carrier Certificates, 61 MCC 209 and 766 (except hides, skins, and pieces therefrom and commodities in bulk), from Kansas City, KS, to points in MO on and North of U.S. Interstate Hwy No. 44, on and West of MO Hwy No. 19, and on and south of U.S. Hwy No. 36, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Rodeo Meats, Inc., 1800 South Summit, Arkansas City, KS 67005. Send protests to: John V. Barry, District Supervisor, Interstate Commerce Commission, 600 Federal Building, 911 Walnut Street, Kansas City, MO 64106.

No. MC 144443TA, filed March 13, 1978. Applicant: GENTRY TRUCKING CO., Candler's Mountain Road, Lynchburg, VA 24502. Applicant's representative: J. Johnson Eller, Jr., 513 Main Street, Altavista, VA 24517. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, Class A and B explosives, household goods as defined by the Commission, and commodities in bulk and those requiring special equipment), having a prior or subsequent movement by rail on rail trailers only, between Lynchburg, VA, and Greensboro, NC, for 180 days. Supporting shipper(s): Western Carloading Co., Inc., 1000 Chattahoochee Avenue SW., Atlanta, GA 30325. Send protests to: Irene W. Yost, Secretary, Interstate Commerce Commission, Bureau of Operations, P.O. Box 210, Roanoke, VA 24011.

No. MC 144445TA, filed March 14, 1978. Applicant: SOUTHWEST CANNING & PACKAGING, INC., 1340 East 19th Street, Tucson, AZ 85719. Applicant's representative: A. Michael Bernstein, 1441 East Thomas Road, Phoenix, AZ 85014. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Metal cans and can ends* (tops or bottoms), from facilities of Continental Can Co., Inc., in Los Angeles and Orange Counties, CA, to facilities of the 19th Street Warehouse in Tucson, AZ, under a continuing contract, or contracts, with Continental Can Co., U.S.A., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Continental Can Co., U.S.A. 5745 East River Road, Chicago, IL 60631. Send protests to: Andrew V. Baylor, District Supervisor, Interstate Commerce Commission, Room 2020, Federal Building, 230 North First Avenue, Phoenix, AZ 85025.

No. MC 144447TA, filed March 14, 1978. Applicant: TREXLER TRUCKING, INC., Route 1, Box 248, Gold Hill, NC 28071. Applicant's representative: George W. Clapp, P.O. Box 836, Taylors, SC 29687. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Lightweight aggregate* (in bulk, in dump vehicles), from the facilities of Carolina Stalite Co. at or near Gold Hill, NC, to points in GA, KY, SC, TN, VA, and WV, and (2) *coal* (in bulk, in dump vehicles), from points in KY, TN, VA, and WV, to the facilities of Carolina Stalite Co. at or near Gold Hill, NC, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Carolina Stalite Co., P.O. Box 1037, Salisbury, NC 28144. Send protests to: Terrell Price, District Supervisor, 800 Briar Creek Road, Room CC516, Mart Office Building, Charlotte, NC 28205.

No. MC 144450TA, filed March 14, 1978. Applicant: HARRISON TRANSFER & STORAGE CO., 326 Prep Phillips Drive, Augusta, GA 30901. Applicant's representative: R. F. Allen, 412 Old Evans Road, Martinez, GA 30907. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Household goods, unaccompanied baggage,*

and personal effects, crated, as defined by the Commission, between points in Richmond County, GA, on the one hand, and, on the other, points in Columbia, Burke, Jefferson, Lincoln, McDuffie, Emanuel, Glascock, Jenkins, Screven, Taliaferro, Warren, and Wilkes Counties, GA, and Aiken, Edgefield, Allendale, Barnwell, Hampton, and McCormick Counties, SC, under a continuing contract, or contracts, with Department of Defense, and Department of the Army, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Department of Defense, Department of the Army, (DAJA-RL) Washington, DC 20310. Send protests to: Sara K. Davis, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, 1252 West Peachtree Street NW., Room 300, Atlanta, GA 30309.

No. MC 144451TA, filed March 15, 1978. Applicant: HIGGINS HAULING, INC., Route 5, Box 289, Hillsboro, OH 45133. Applicant's representatiave: James W. Muldoon, Muldoon, Pemberton & Ferris, 50 West Broad Street, Columbus, OH 43215. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Construction materials, equipment, and supplies,* except commodities in bulk, between Dodson Township, Highland County, OH, on the one hand, and, on the other, AL, AR, GA, IL, IN, IA, KS, KY, MI, MS, MO, NY, NC, OK, PA SC, TN, WV, and WI. Restriction: The operations authorized herein are limited to a transportation service to be performed, under a continuing contract, or contracts, with Higgins Construction & Supply Co., of Hillsboro, OH, for 180 days. Supporting shipper: Higgins Construction & Supply Co., James R. Higgins, President, Route 5, Box 289, Hillsboro, OH 45133. Send protests to: Paul J. Lowry, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 5514-B, Federal Building, 550 Main Street, Cincinnati, OH 45202.

PASSENGER CARRIER

No. MC 144296 (Sub-No. 1TA), filed March 13, 1978. Applicant: LEWIS BUS LINES, INC., 1269 Gordon Hwy, Augusta, GA 30902. Applicant's representative: Clyde W. Carver, 5299 Roswell Road NE., Suite 212, Atlanta, GA 30342. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Passengers and their baggage,* in the same vehicle with passengers in special and charter operations, from points in Columbia, Richmond, Burke, Jefferson, Glascock, Warren, and McDuffie Counties, GA, to points in AL, FL, NC, SC, TN, and VA, and return, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): There are approximately (18) statements of support attached to the application which may be examined at the Interstate Commerce Commission in Washington, DC, or copies thereof which may be examined at the field office named below. Send protests to: Sara K. Davis, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, 1252 West Peachtree Street NW., Room 300, Atlanta, GA 30309.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-8820 Filed 4-3-78; 8:45 am]

[7035-01]

[ICC Order No. P-6]

SOUTHERN PACIFIC TRANSPORTATION CO.

Passenger Train Operation

It appearing, That the National Railroad Passenger Corp. (Amtrak) has established through passenger train service between Chicago, Ill., and Los Angeles, Calif.; that the operation of these trains require the use of employees, tracks and other facilities, of The Atchison, Topeka and Santa Fe Railway Co. (ATSF); that a portion of ATSF's tracks between Barstow, Calif., and San Bernardino, Calif., are temporarily out of service due to a freight train derailment; that an alternate route is available between Barstow and Mojave, Calif., on the ATSF, thence via the Southern Pacific Transportation Co. from Mojave to Los Angeles, Calif.; that its use is necessary in the interest of the public and the commerce of the people; that notice and public procedure herein are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered, That: (a) Pursuant to the authority vested in me by order of the Commission dated March 1, 1978, and of the authority vested in the Commission by section 402(c) of the Rail Passenger Service Act of 1970 (45 U.S.C. § 562(c)), the Southern Pacific Transportation Co. (SP) be, and it is hereby directed to operate trains of the National Railroad Passenger Corporation (Amtrak) between a connection with The Atchison, Topeka and Santa Fe Railway Co. (ATSF) at Mojave, Calif., and Los Angeles, Calif.

(b) In executing the provisions of this order, the common carriers involved shall proceed even though no agreements or arrangements now exist between them with reference to the compensation terms and conditions applicable to said transportation. The compensation terms and conditions shall be, during the time this order remains in force, those which are voluntraily agreed upon by and between said carriers; or upon failure of the carriers to so agree, the compensation terms and conditions shall be as hereafter fixed by the Commission upon petition of any or all of the said carriers, in accordance with pertinent authority conferred upon it by the Interstate Commerce Act and by the Rail Passenger Service Act of 1970, as amended.

(c) *Application.* The provisions of this order shall apply to intrastate, interstate, and foreign traffic.

(d) *Effective date.* This order shall become effective at 4:30 p.m., p.s.t., March 6, 1978.

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., p.s.t., March 7, 1978, unless otherwise modified, changed or suspended by order of this Commission.

It is further ordered, That this order shall be served upon Southern Pacific Transportation Co., and upon the National Passenger Corp. (Amtrak), and that it be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., March 6, 1978.

INTERSTATE COMMERCE COMMISSION,
JOEL E. BURNS,
Agent.

[FR Doc. 78-8824 Filed 4-3-78; 8:45 am]

[7035-01]

[AB 14 (SDM)]

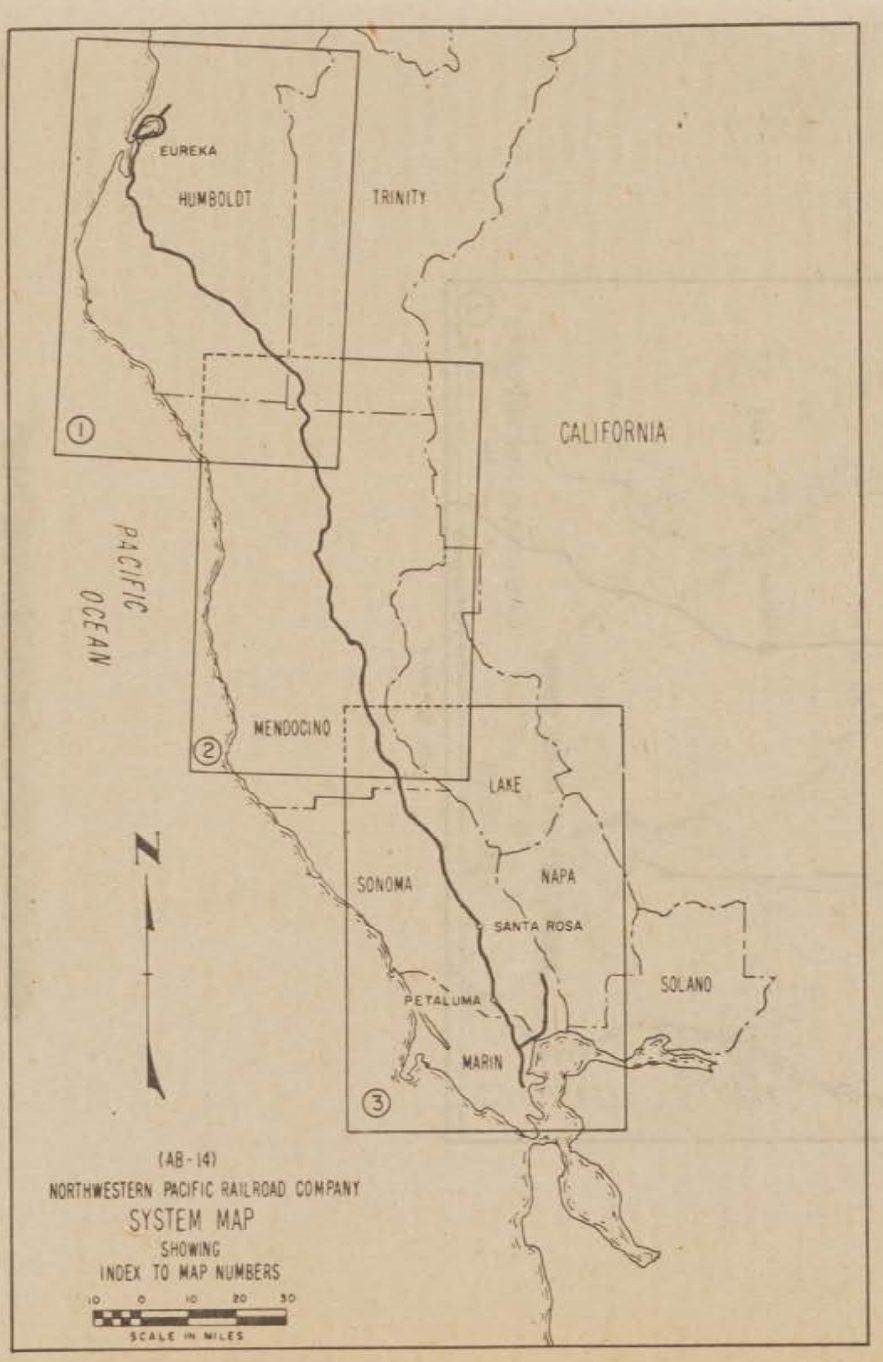
NORTHWESTERN PACIFIC RAILROAD CO.

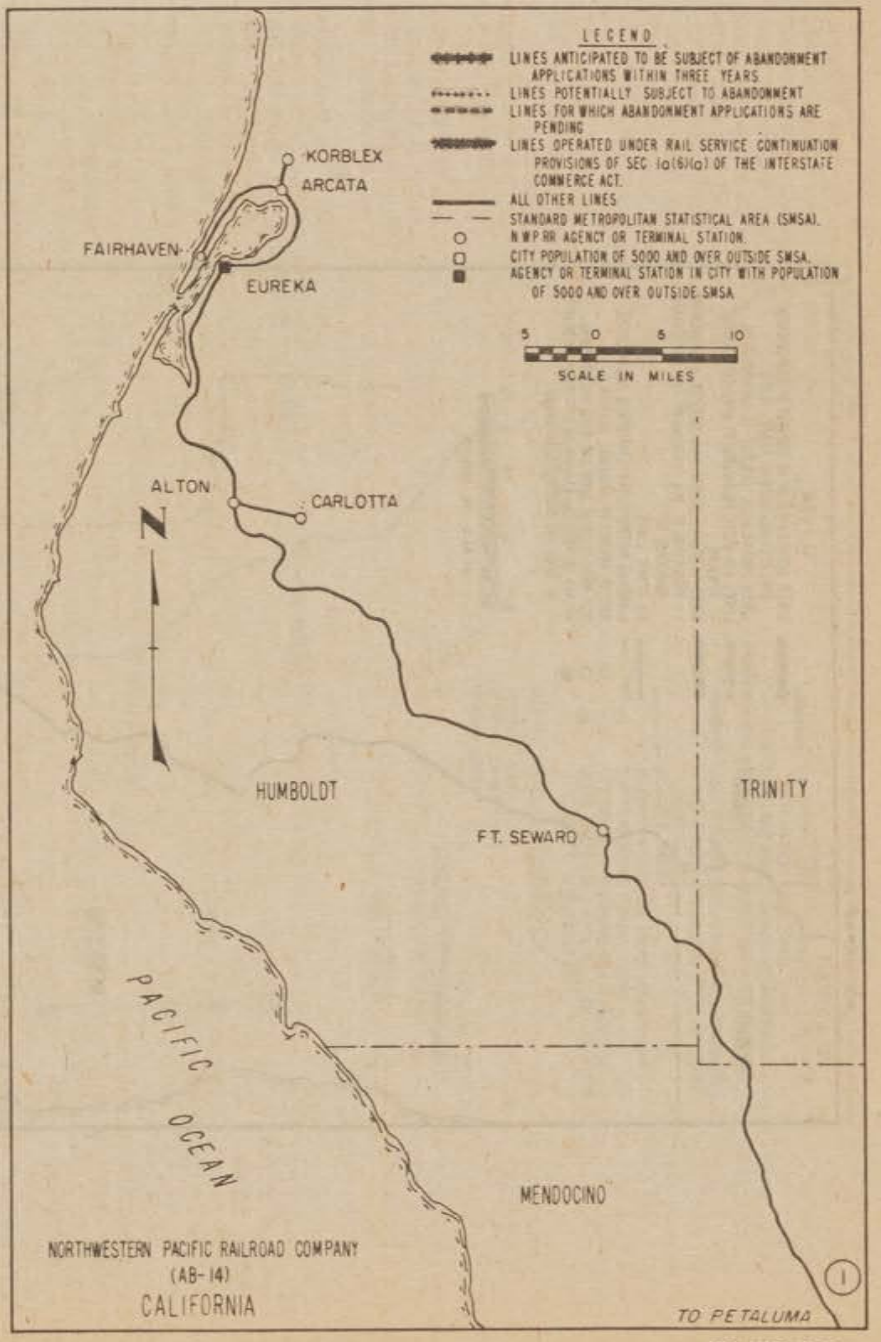
Revised System Diagram Map

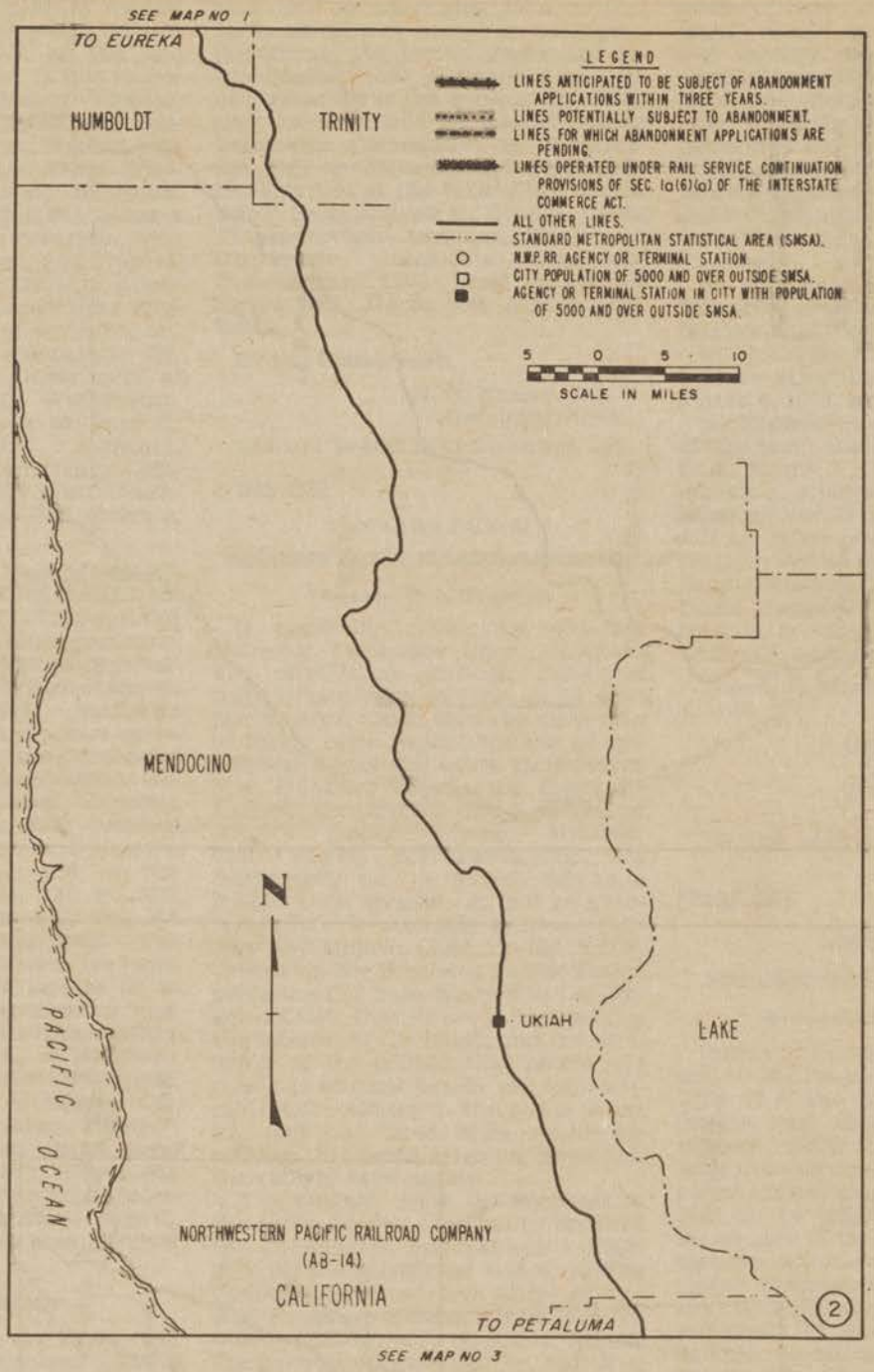
Notice is hereby given that, pursuant to the requirements contained in Title 49 of the Code of Federal Regulations, Part 1121.23, that the Northwestern Pacific Railroad Co., has filed with the Commission its revised color-coded system diagram map in Docket No. AB 14 (SDM). The maps reproduced here in black and white are reasonable reproductions of that revised system diagram map and the Commission on February 28, 1978, received a certificate of publication as required by said regulation which is considered the effective date on which the revised system diagram map was filed.

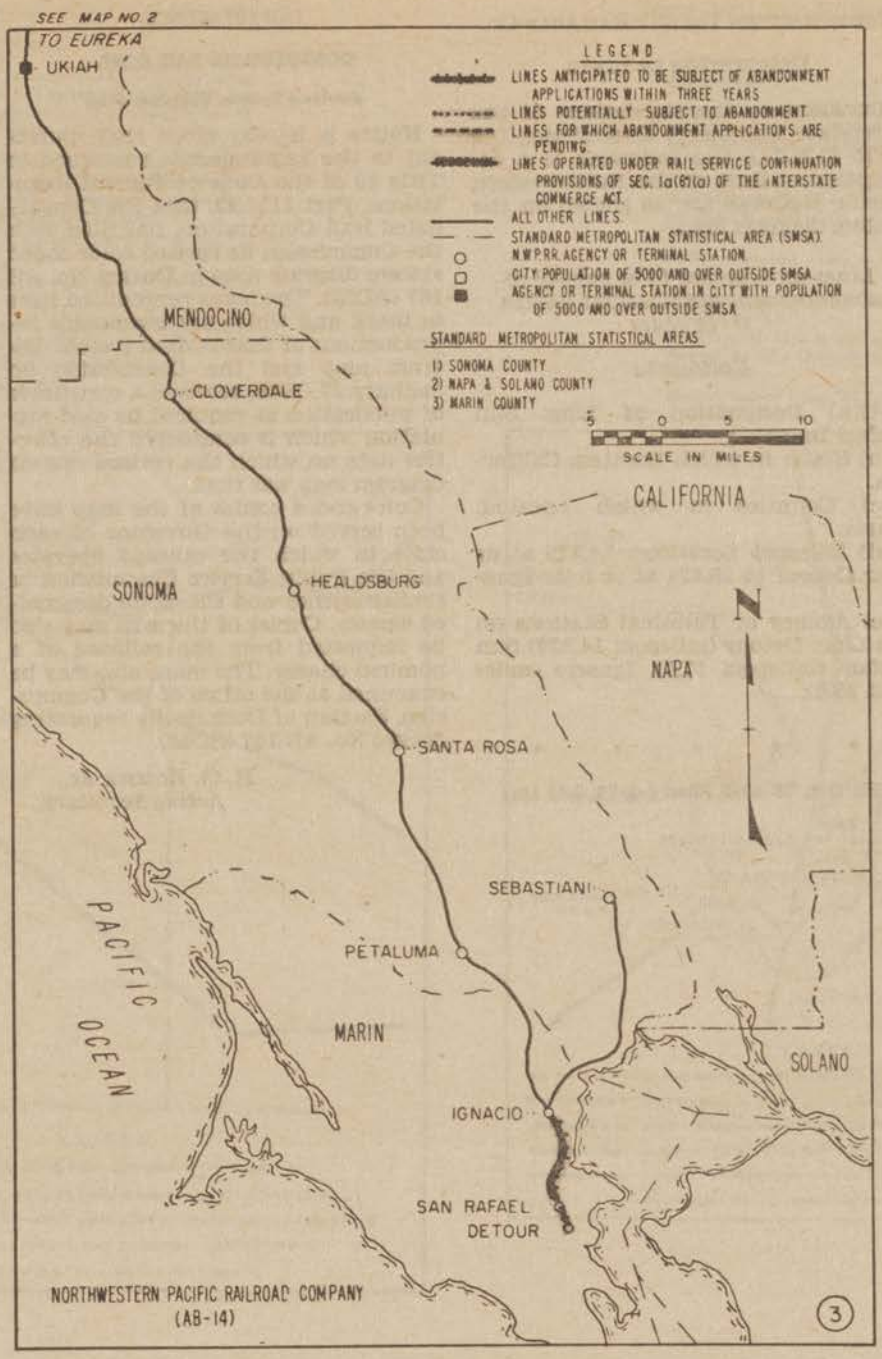
Color-coded copies of the map have been served on the Governor of each State in which the railroad operates and the Public Service Commission or similar agency and the State designated agency. Copies of the map may also be requested from the railroad at a nominal charge. The maps also may be examined at the office of the Commission, Section of Dockets, by requesting docket No. AB 14 (SDM).

H. G. HOMME, Jr.,
Acting Secretary.


EUREKA
HUMBOLDT
TRINITY
CALIFORNIA
PACIFIC OCEAN
MENDOCINO
LAKE
SONOMA
NAPA
SANTA ROSA
SOLANO
PETALUMA
MARIN
N
(AB-14)
NORTHWESTERN PACIFIC RAILROAD COMPANY
SYSTEM MAP
SHOWING
INDEX TO MAP NUMBERS
10 0 10 20 30
SCALE IN MILES


LEGEND
LINES ANTICIPATED TO BE SUBJECT OF ABANDONMENT APPLICATIONS WITHIN THREE YEARS.
LINES POTENTIALLY SUBJECT TO ABANDONMENT.
LINES FOR WHICH ABANDONMENT APPLICATIONS ARE PENDING.
LINES OPERATED UNDER RAIL SERVICE CONTINUATION PROVISIONS OF SEC. 1a(6)(a) OF THE INTERSTATE COMMERCE ACT.
ALL OTHER LINES.
STANDARD METROPOLITAN STATISTICAL AREA (SMSA).
N.W.P.RR. AGENCY OR TERMINAL STATION.
CITY POPULATION OF 5000 AND OVER OUTSIDE SMSA.
AGENCY OR TERMINAL STATION IN CITY WITH POPULATION OF 5000 AND OVER OUTSIDE SMSA.
5 0 5 10
SCALE IN MILES
KORBLEX
ARCATA
FAIRHAVEN
EUREKA
ALTON
CARLOTTA
N
HUMBOLDT
TRINITY
FT. SEWARD
PACIFIC OCEAN
MENDOCINO
NORTHWESTERN PACIFIC RAILROAD COMPANY
(AB-14)
CALIFORNIA
TO PETALUMA
SEE MAP NO 2


SEE MAP NO 1
TO EUREKA
HUMBOLDT
TRINITY
LEGEND
LINES ANTICIPATED TO BE SUBJECT OF ABANDONMENT APPLICATIONS WITHIN THREE YEARS.
LINES POTENTIALLY SUBJECT TO ABANDONMENT.
LINES FOR WHICH ABANDONMENT APPLICATIONS ARE PENDING.
LINES OPERATED UNDER RAIL SERVICE CONTINUATION PROVISIONS OF SEC. 1a(6)(a) OF THE INTERSTATE COMMERCE ACT.
ALL OTHER LINES.
STANDARD METROPOLITAN STATISTICAL AREA (SMSA).
N.W.P. RR. AGENCY OR TERMINAL STATION
CITY POPULATION OF 5000 AND OVER OUTSIDE SMSA.
AGENCY OR TERMINAL STATION IN CITY WITH POPULATION OF 5000 AND OVER OUTSIDE SMSA.
5 0 5 10
SCALE IN MILES
MENDOCINO
N
UKIAH
LAKE
PACIFIC OCEAN
NORTHWESTERN PACIFIC RAILROAD COMPANY
(AB-14)
CALIFORNIA
TO PETALUMA
2
SEE MAP NO 3


SEE MAP NO. 2
TO EUREKA
UKIAH
LEGEND
LINES ANTICIPATED TO BE SUBJECT OF ABANDONMENT APPLICATIONS WITHIN THREE YEARS
LINES POTENTIALLY SUBJECT TO ABANDONMENT
LINES FOR WHICH ABANDONMENT APPLICATIONS ARE PENDING
LINES OPERATED UNDER RAIL SERVICE CONTINUATION PROVISIONS OF SEC. 1a(6)(a) OF THE INTERSTATE COMMERCE ACT.
ALL OTHER LINES
STANDARD METROPOLITAN STATISTICAL AREA (SMSA)
N.W.P.R.R. AGENCY OR TERMINAL STATION
CITY POPULATION OF 5000 AND OVER OUTSIDE SMSA
AGENCY OR TERMINAL STATION IN CITY WITH POPULATION OF 5000 AND OVER OUTSIDE SMSA
STANDARD METROPOLITAN STATISTICAL AREAS
1) SONOMA COUNTY
2) NAPA & SOLANO COUNTY
3) MARIN COUNTY
5 0 5 10
SCALE IN MILES
MENDOCINO
CLOVERDALE
CALIFORNIA
SONOMA
HEALDSBURG
N
NAPA
SANTA ROSA
SEBASTIANI
PETALUMA
PACIFIC OCEAN
MARIN
SOLANO
IGNACIO
SAN RAFAEL DETOUR
NORTHWESTERN PACIFIC RAILROAD COMPANY
(AB-14)
3

NORTHWESTERN PACIFIC RAILROAD CO.

DESCRIPTION OF LINES

Pursuant to the regulations of the Interstate Commerce Commission (49 CFR 1121.21), the following is a description of lines of the Northwestern Pacific Railroad Co. as shown on the system diagram map:

Lines anticipated to be subject of abandonment applications within three years

California

(1)(a) Designation of Line: San Rafael Branch.
(b) States in which Located: California.
(c) Counties in which Located: Marin.
(d) Milepost Locations: 14.329 at or near Detour to 25.821 at or near Ignacio.
(e) Agency or Terminal Stations on the Line: Detour (milepost 14.329) San Rafael (milepost 17.0), Ignacio (milepost 25.8).

* * * * *

[FR Doc. 78-8670 Filed 4-3-78; 8:45 am]

[AB 167 (SDM)]

CONSOLIDATED RAIL CORP.

Revised System Diagram Map

Notice is hereby given that, pursuant to the requirements contained in Title 49 of the Code of Federal Regulations, Part 1121.23, that the Consolidated Rail Corporation, has filed with the Commission its revised color-coded system diagram map in Docket No. AB 167 (SDM). The maps reproduced here in black and white are reasonable reproductions of that revised system diagram map and the Commission on January 27, 1978, received a certificate of publication as required by said regulation which is considered the effective date on which the revised system diagram map was filed.

Color-coded copies of the map have been served on the Governor of each state in which the railroad operates and the Public Service Commission or similar agency and the State designated agency. Copies of the map may also be requested from the railroad at a nominal charge. The maps also may be examined at the office of the Commission, Section of Dockets, by requesting docket No. AB 167 (SDM).

H. G. HOMME, Jr.,
Acting Secretary.

Pittsburgh-Chicago Main Line

CATEGORY 1

Lines or portions of lines which the carrier anticipates will be the subject of an abandonment or discontinuance application to be filed within a 3-year period.

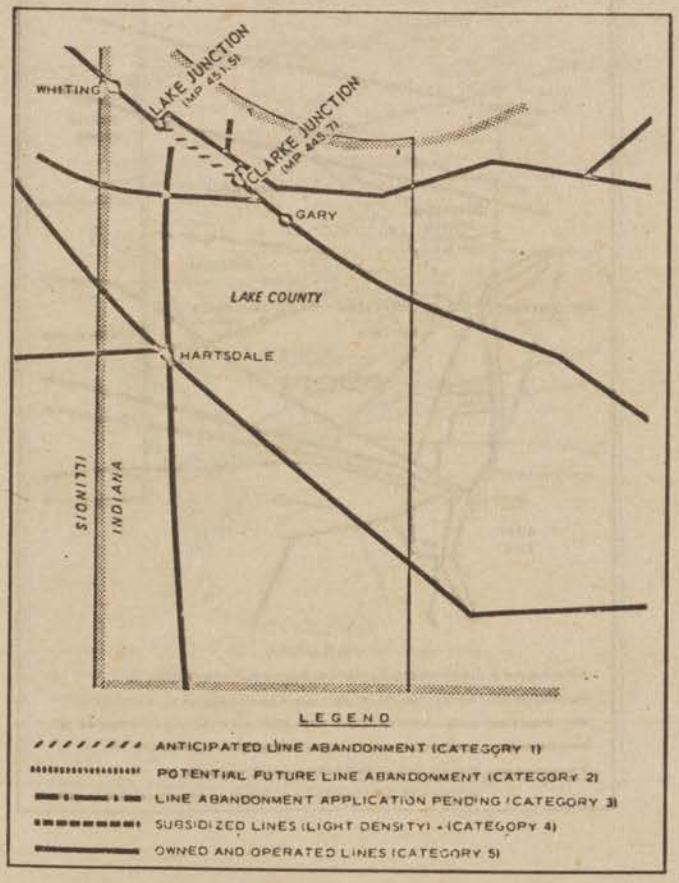
A) Designation: Pittsburgh-to-Chicago Main Line (06323202), Chicago Division, Western Region. Formerly part of the Penn Central Transportation Company.

B) State: Located wholly in the state of Indiana.

C) County: Located wholly in the county of Lake.

D) Mileposts: Line extends approximately from milepost 445.7 at Clarke Junction to milepost 451.5 at Lake Junction.

E) Stations: None.



New Albany Running Track

CATEGORY 1

Lines or portions of lines which the carrier anticipates will be the subject of an abandonment or discontinuance application to be filed within a 3-year period.

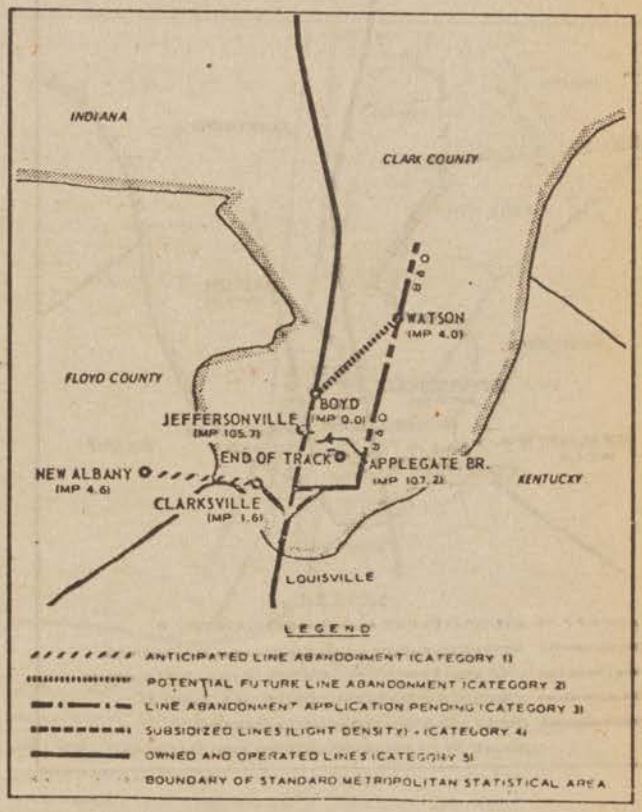
A) Designation: New Albany Running Track (06838352), Southwest Division, Southern Region. Formerly part of the Penn Central Transportation Company.

B) State: Located wholly in the state of Indiana.

C) County: Located partially in the counties of Clark and Floyd.

D) Mileposts: Line extends approximately from milepost 1.6 at Clarksville to milepost 4.6 at New Albany.

E) Stations: New Albany, Ind.



Applegate Branch

CATEGORY 1

Lines or portions of lines which the carrier anticipates will be the subject of an abandonment or discontinuance application to be filed within a 3-year period.

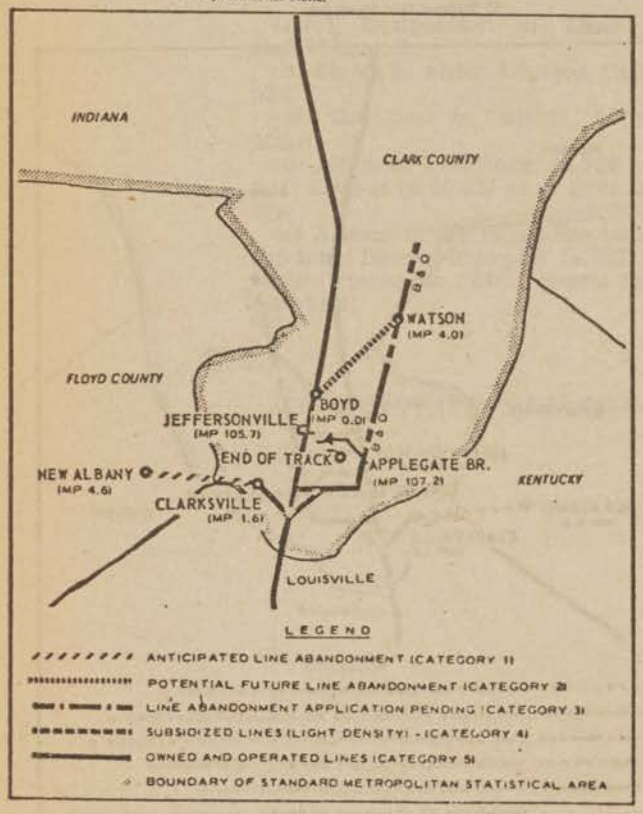
A) Designation: Applegate Branch (06838333), Southwest Division, Southern Region. Formerly part of the Penn Central Transportation Company.

B) State: Located wholly in the state of Indiana.

C) County: Located wholly in the county of Clark.

D) Mileposts: Line extends approximately from milepost 105.7 at Jeffersonville to milepost 107.2 at end of Indiana track.

E) Stations: None.



Lockport Branch

CATEGORY 1

Lines or portions of lines which the carrier anticipates will be the subject of an abandonment or discontinuance application to be filed within a 3-year period.

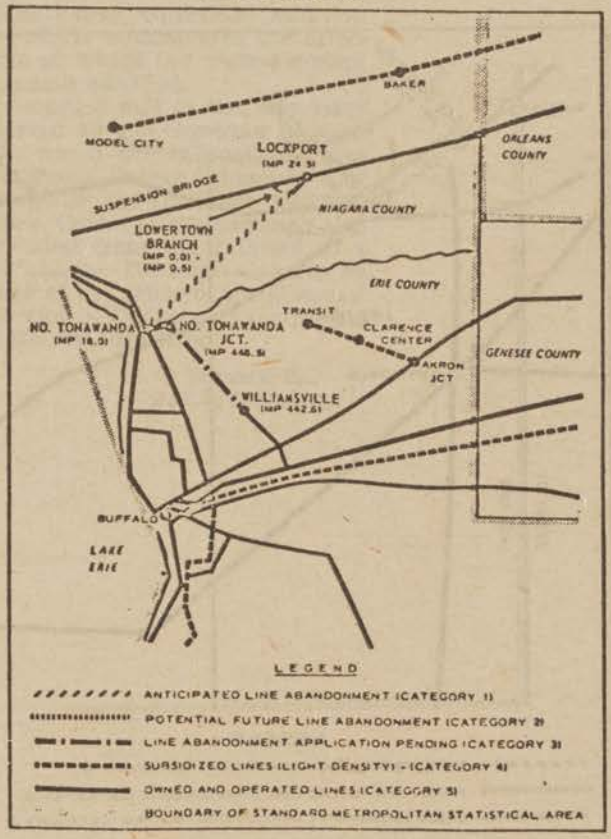
A) Designation: Lockport Branch (13486463), Buffalo Division, Northeastern Region. Formerly part of the Erie Lackawanna Railway Company.

B) State: Located wholly in the state of New York.

C) County: Located wholly in the county of Niagara.

D) Mileposts: Line extends approximately from milepost 18.0 at N. Tonawanda to milepost 24.5 at Lockport.

E) Stations: North Tonawanda, N.Y., Pendleton Center, N.Y., Lockport, N.Y.



Lowertown Branch

CATEGORY 1

Lines or portions of lines which the carrier anticipates will be the subject of an abandonment or discontinuance application to be filed within a 3-year period.

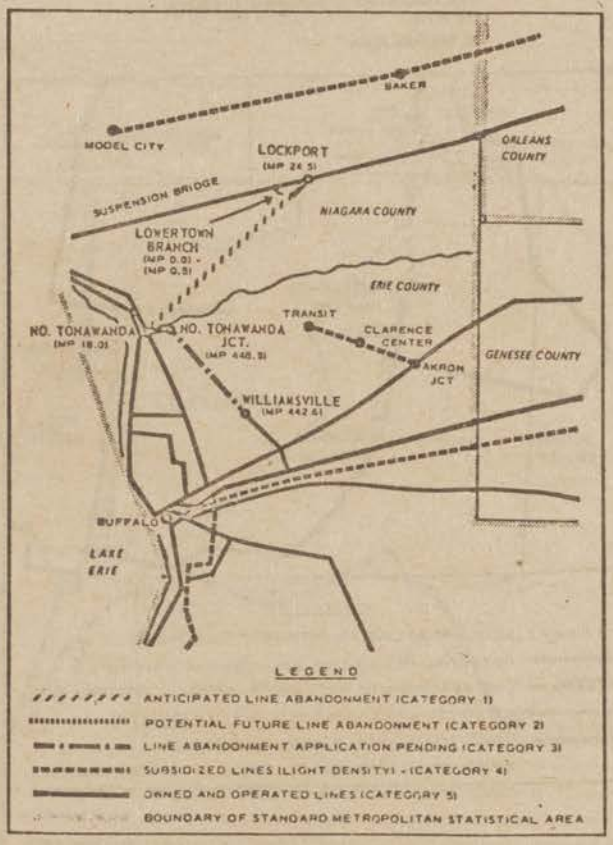
A) Designation: Lowertown Branch (see Lockport Branch 13486463) Buffalo Division, Northeastern Region. Formerly part of the Erie Lackawanna Railway Company.

B) State: Located wholly in the state of New York.

C) County: Located wholly in the county of Niagara.

D) Mileposts: Line extends approximately from milepost 0.0 to milepost 0.5 at Lockport, New York.

E) Stations: None.



Putnum Industrial Track

CATEGORY 1

Lines or portions of lines which the carrier anticipates will be the subject of an abandonment or discontinuance application to be filed within a 3-year period.

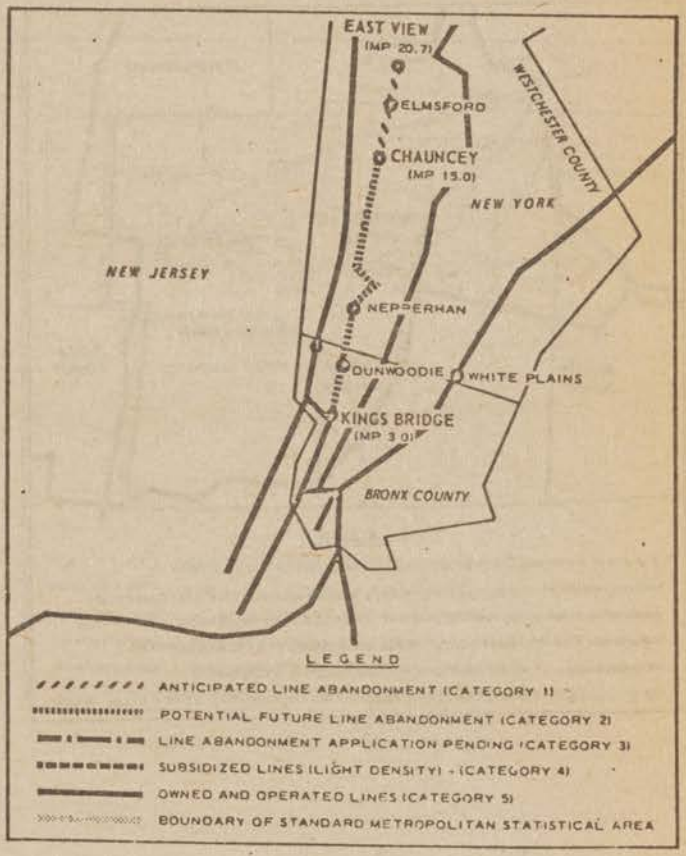
A) Designation: Putnam Industrial Track (13474233), Mohawk-Hudson Division, Northeastern Region. Formerly part of the Penn Central Transportation Company.

B) State: Located wholly in the state of New York.

C) County: Located wholly in the county of Westchester.

D) Mileposts: Line extends approximately from milepost 15.0 at Chauncey to milepost 20.7 at East View.

E) Stations: Chauncey, N.Y., Elmsford, N.Y., East View, N.Y.



Horseheads Branch

CATEGORY 1

Lines or portions of lines which the carrier anticipates will be the subject of an abandonment or discontinuance application to be filed within a 3-year period.

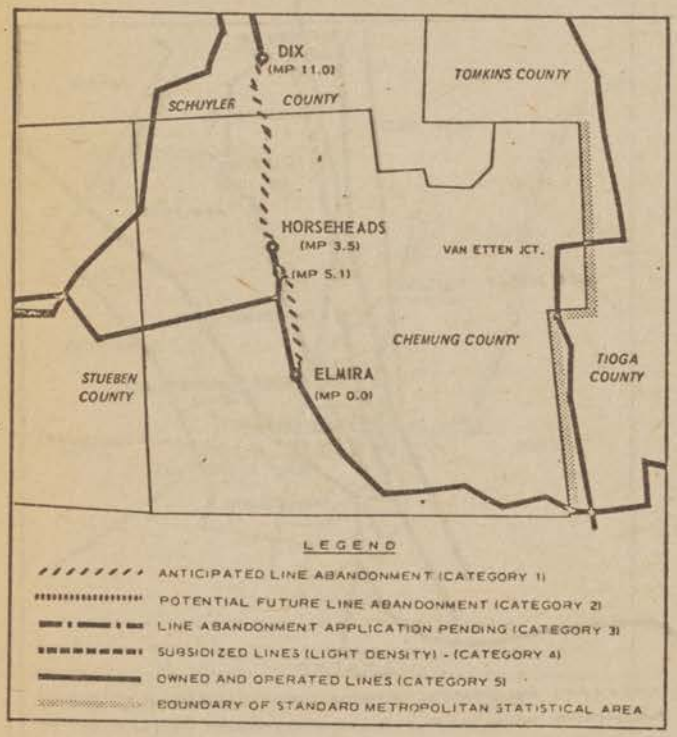
A) Designation: Lehigh Valley Horseheads Branch (13660608), Susquehanna Division, Atlantic Region. Formerly part of the Lehigh Valley Railroad Company—line from Waverly to Elmira and onto Horseheads.

B) State: Located wholly in the state of New York.

C) County: Located wholly in the county of Chemung.

D) Mileposts: Line extends approximately from milepost 0.0 at Elmira to milepost 5.1 at Horseheads.

E) Stations: None.



Watkins Glen Secondary

CATEGORY 1

Lines or portions of lines which the carrier anticipates will be the subject of an abandonment or discontinuance application to be filed within a 3-year period.

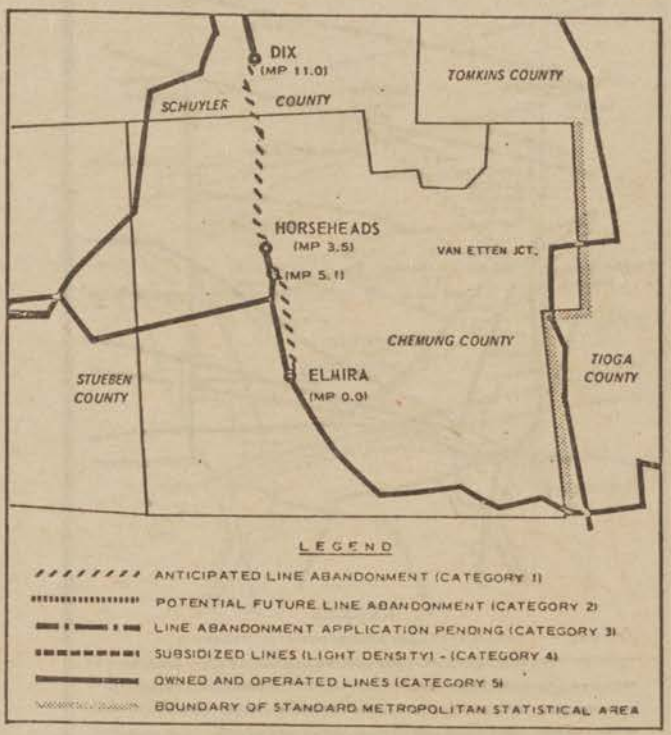
A) Designation: Watkins Glen Secondary (13662318C), Susquehanna Division, Atlantic Region. Formerly part of the Penn Central Transportation Company.

B) State: Located wholly in the state of New York.

C) County: Located in the counties of Chemung and Schuyler.

D) Mileposts: Line extends approximately from milepost 3.5 at Horseheads to milepost 11.0 at Dix.

E) Stations: None.



River Line

CATEGORY 1

Lines or portions of lines which the carrier anticipates will be the subject of an abandonment or discontinuance application to be filed within a 3-year period.

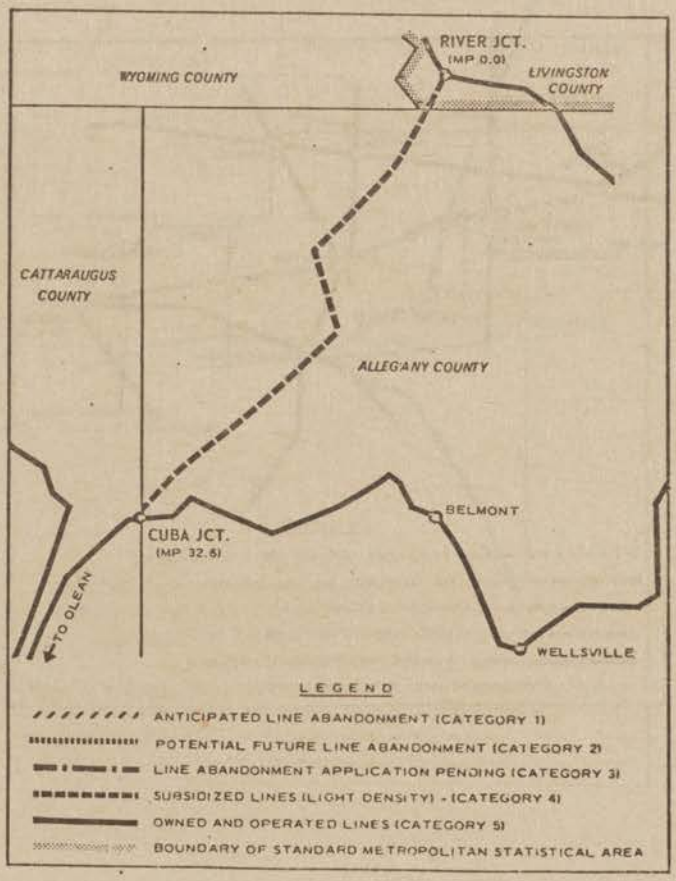
A) Designation: River Line (13256541), Youngstown Division, Central Region. Formerly part of the Erie Lackawanna Railway Company.

B) State: Located wholly in the state of New York.

C) County: Located partially in the counties of Livingston, Allegany, and Cattaraugus.

D) Mileposts: Line extends approximately from milepost 0.0 at River Jct. to milepost 32.6 at Cuba Jct.

E) Stations: None.



Caledonia Secondary

CATEGORY 1

Lines or portions of lines which the carrier anticipates will be the subject of an abandonment or discontinuance application to be filed within a 3-year period.

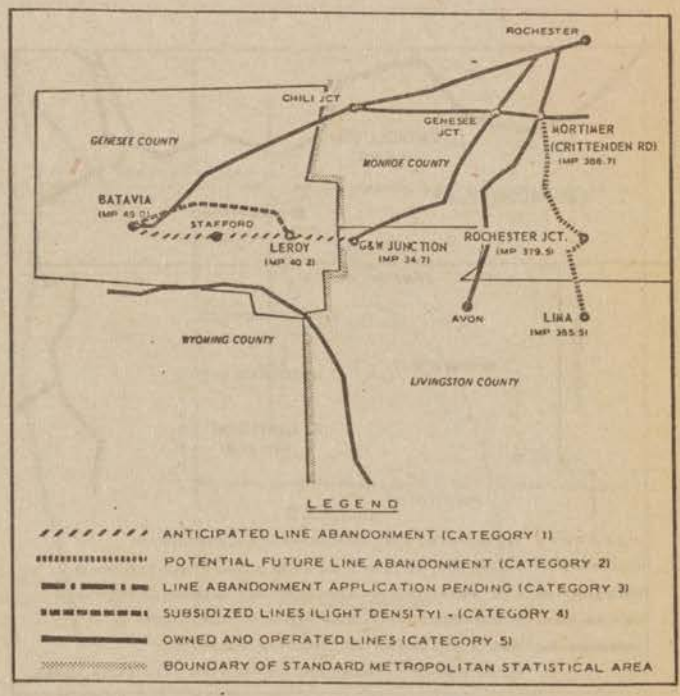
A) Designation: Caledonia Secondary (13484839), Buffalo Division, Northeastern Region. Formerly part of the Penn Central Transportation Company.

B) State: Located wholly in the state of New York.

C) County: Located in the counties of Livingston and Genesee.

D) Mileposts: Line extends approximately from milepost 34.7 at Genesee and Wyoming Railroad Junction to milepost 49.0 at Batavia.

E) Stations: LeRoy, N.Y., Stafford, N.Y.



Bradford Branch

CATEGORY 1

Lines or portions of lines which the carrier anticipates will be the subject of an abandonment or discontinuance application to be filed within a 3-year period.

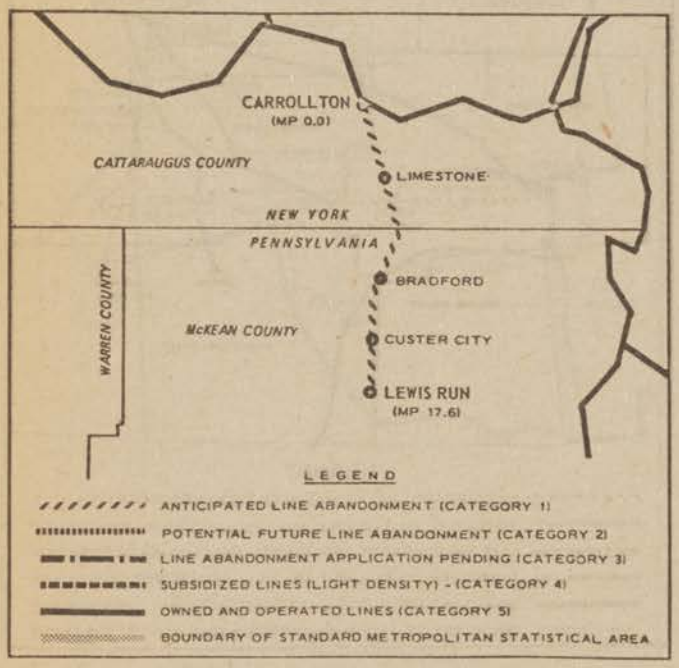
A) Designation: Bradford Branch (44256552), Youngstown Division, Central Region. Formerly part of the Erie Lackawanna Railway Company.

B) State: Located wholly in the states of New York and Pennsylvania.

C) County: Located in the counties of Cattaraugus (NY) and McKean (PA).

D) Mileposts: Line extends approximately from milepost 0.0 at Carrollton, New York to milepost 17.6 at Lewis Run, Pennsylvania.

E) Stations: Carrollton, N.Y., Limestone, N.Y., Bradford, Pa., Custer City, Pa., Lewis Run, Pa.



Erie-Lackawanna Main Line

CATEGORY 1

Lines or portions of lines which the carrier anticipates will be the subject of an abandonment or discontinuance application to be filed within a 3-year period.

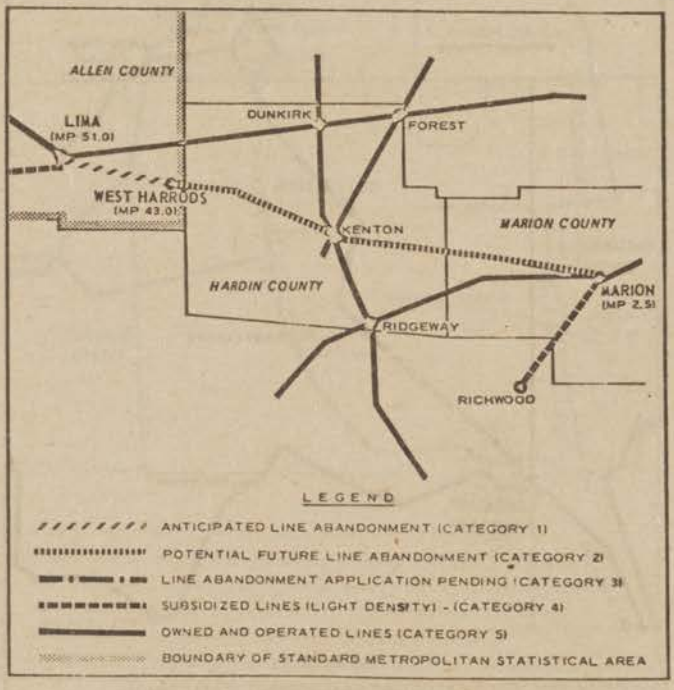
A) Designation: Former Erie Lackawanna Main Line (see Marion Branch 14816601), Columbus Division, Southern Region. Formerly part of the Erie Lackawanna Railway Company.

B) State: Located wholly in the state of Ohio.

C) County: Located wholly in the county of Allen.

D) Mileposts: Line extends approximately from milepost 43.0 at W.Harrods to milepost 51.0 at Lima.

E) Stations: Westminster, Ohio.



Zanesville Secondary

CATEGORY 1

Lines or portions of lines which the carrier anticipates will be the subject of an abandonment or discontinuance application to be filed within a 3-year period.

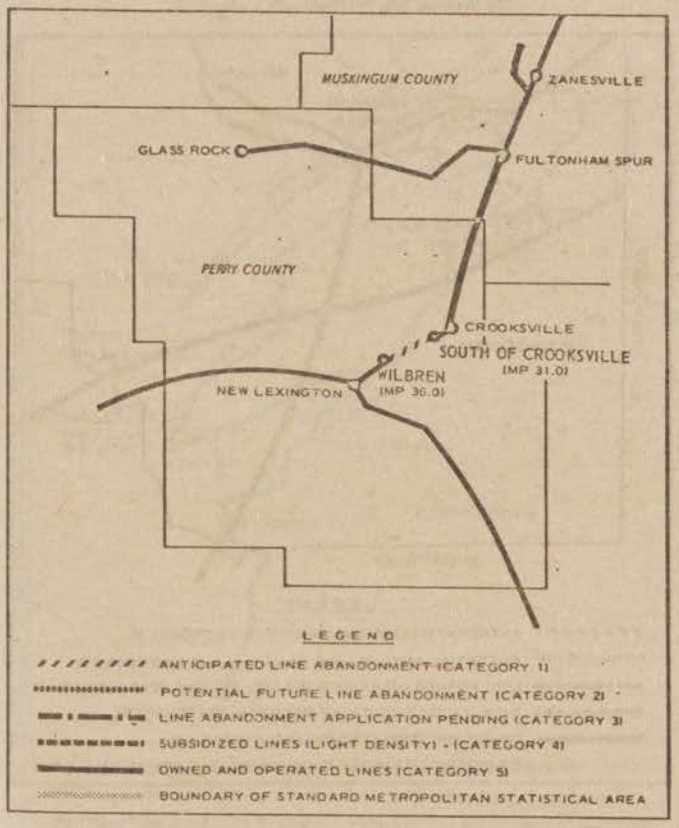
A) Designation: Zanesville Secondary (14818135A), Columbus Division, Southern Region. Formerly part of the Penn Central Transportation Company.

B) State: Located wholly in the state of Ohio.

C) County: Located wholly in the county of Perry.

D) Mileposts: Line extends approximately from milepost 31.0 south of Crooksville to milepost 36.0 at Wilbren (New Lexington).

E) Stations: None.



Clement-Lytle Industrial Track

CATEGORY 1

Lines or portions of lines which the carrier anticipates will be the subject of an abandonment or discontinuance application to be filed within a 3-year period.

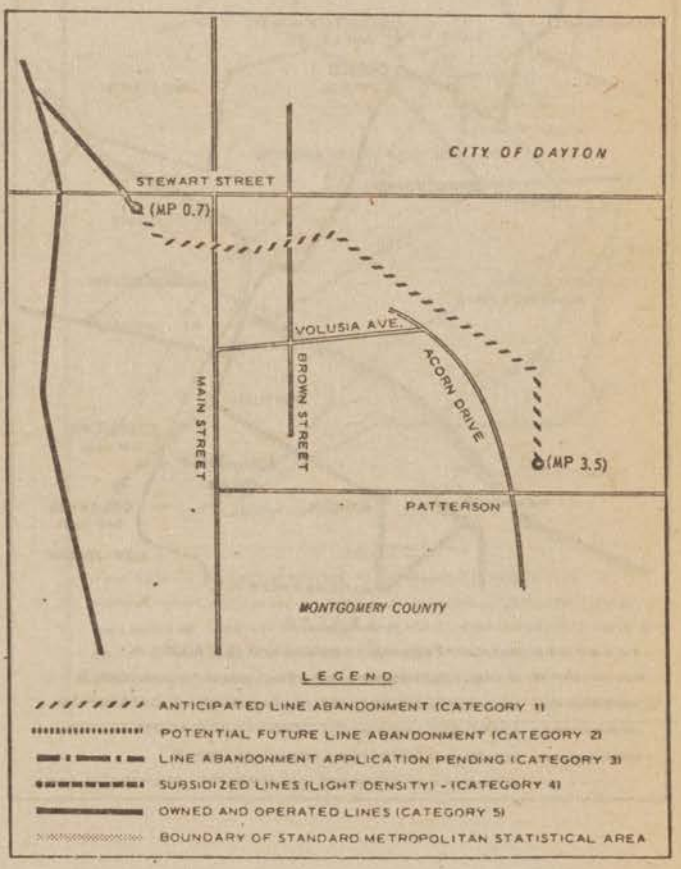
A) Designation: Clement-Lytle Industrial Track (14828256A), Cincinnati Division, Southern Region. Formerly part of the Penn Central Transportation Company.

B) State: Located wholly in the state of Ohio.

C) County: Located wholly in the county of Montgomery.

D) Mileposts: Line extends approximately from milepost 0.7 at Dayton to milepost 3.5 at end of track.

E) Stations: None.



Cresco and Mountain Home Branch

CATEGORY 1

Lines or portions of lines which the carrier anticipates will be the subject of an abandonment or discontinuance application to be filed within a 3-year period.

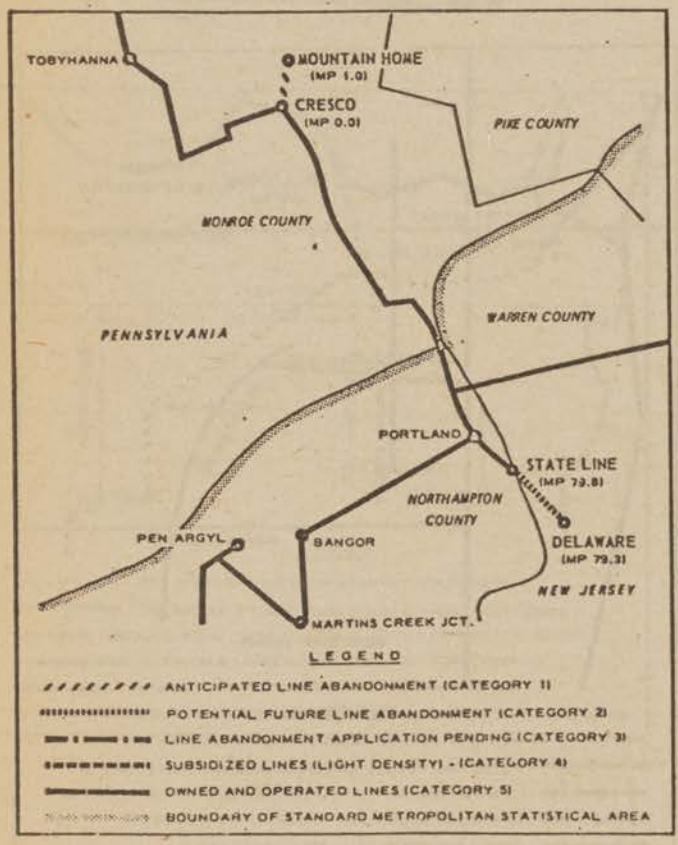
A) Designation: Cresco and Mountain Home Branch (15626201), Hoboken Division, Atlantic Region. Formerly a part of the Erie Lackawanna Railway Company.

B) State: Located wholly in the state of Pennsylvania.

C) County: Located wholly in the county of Monroe.

D) Mileposts: Line extends approximately from milepost 0.0 at Cresco to milepost 1.0 at Mountain Home.

E) Stations: Mountain Home, Pa.



Reno Industrial Track

CATEGORY 1

Lines or portions of lines which the carrier anticipates will be the subject of an abandonment or discontinuance application to be filed within a 3-year period.

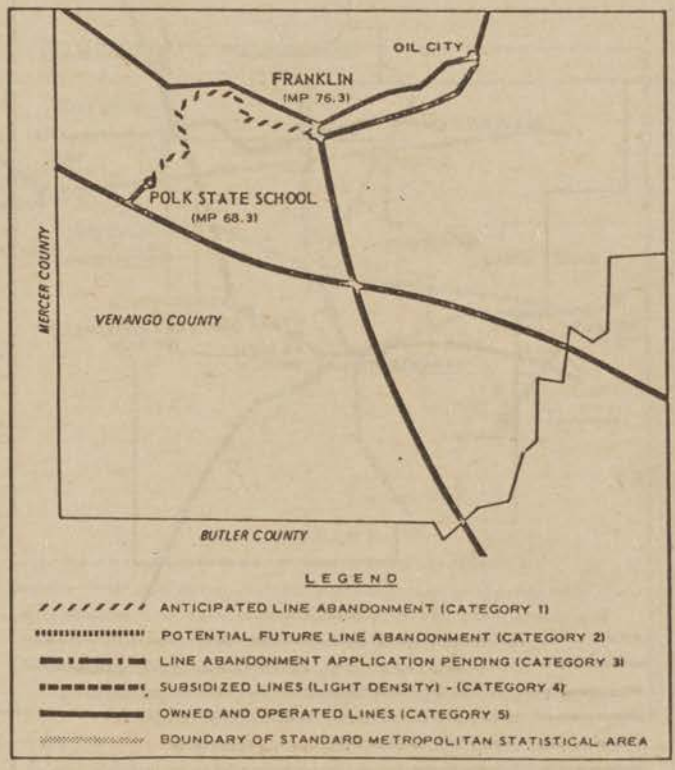
A) Designation: Reno Industrial Track (15242345), Youngstown Division, Central Region. Formerly part of the Penn Central Transportation Company.

B) State: Located wholly in the state of Pennsylvania.

C) County: Located wholly in the county of Venango.

D) Mileposts: Line extends approximately from milepost 68.3 at Polk State School to milepost 76.3 at Franklin.

E) Stations: Polk, Pa., Franklin, Pa.



Laurel Branch

CATEGORY 1

Lines or portions of lines which the carrier anticipates will be the subject of an abandonment or discontinuance application to be filed within a 3-year period.

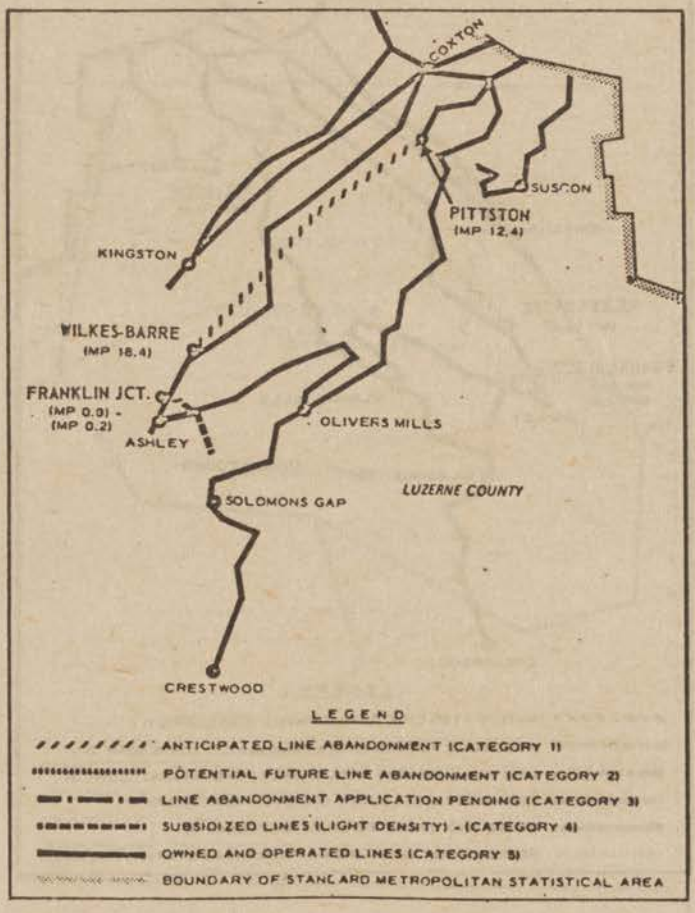
A) Designation: Laurel Branch (former Lackawanna and Wyoming Valley Branch) (15626254), Hoboken Division, Atlantic Region. Formerly part of the Lackawanna & Wyoming Valley Railway Company.

B) State: Located wholly in the state of Pennsylvania.

C) County: Located wholly in the county of Luzerne.

D) Mileposts: Line extends approximately from milepost 12.4 at Pittston to milepost 18.4 at Wilkes-Barre.

E) Stations: Pittston, Pa.



60th Street Branch

CATEGORY 1

Lines or portions of lines which the carrier anticipates will be the subject of an abandonment or discontinuance application to be filed within a 3-year period.

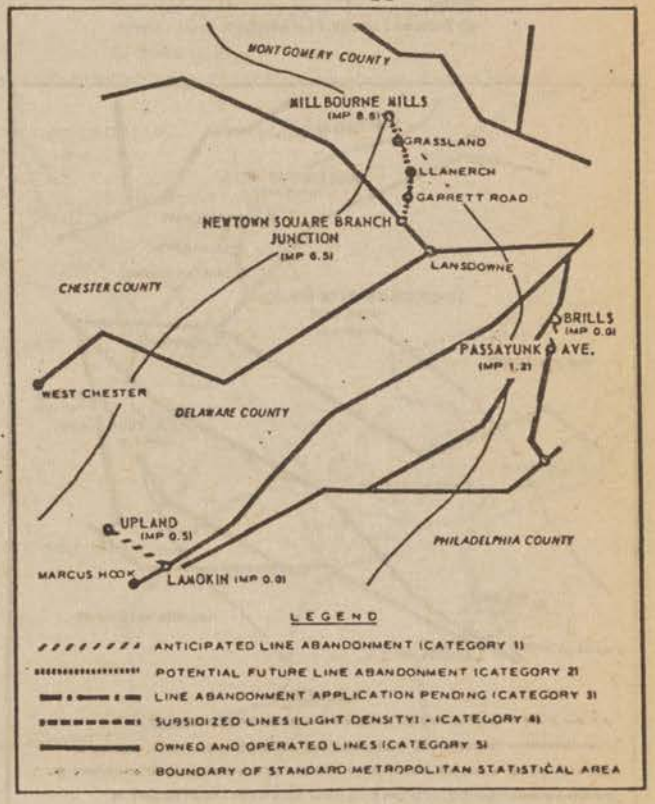
A) Designation: 60th Street Branch (15111145), Philadelphia Division, Eastern Region. Formerly part of the Penn Central Transportation Company.

B) State: Located wholly in the state of Pennsylvania.

C) County: Located wholly in the county of Philadelphia.

D) Mileposts: Line extends approximately from milepost 0.0 at Brills to milepost 1.2 at Passyunk Avenue.

E) Stations: None.



Chester Creek Secondary

CATEGORY 1

Lines or portions of lines which the carrier anticipates will be the subject of an abandonment or discontinuance application to be filed within a 3-year period.

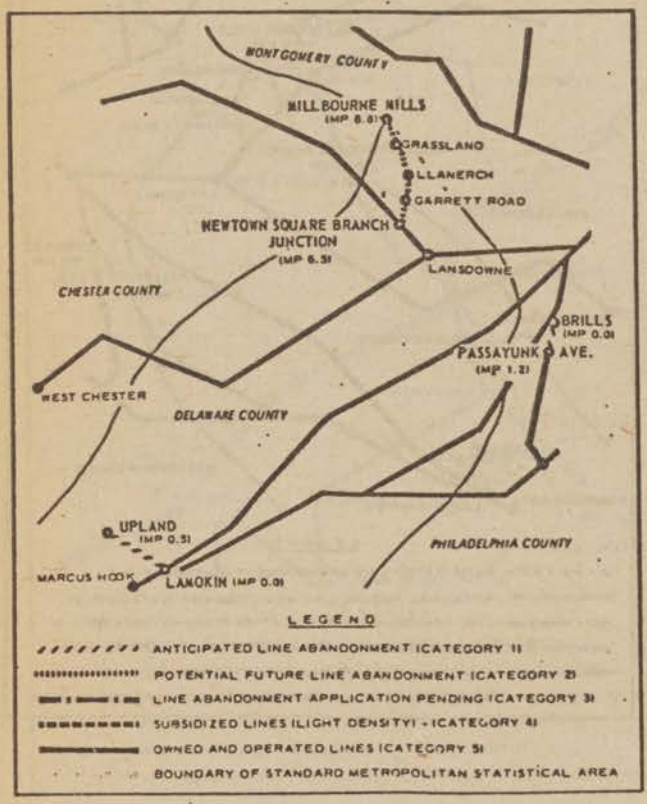
A) Designation: Chester Creek Secondary (15111245), Philadelphia Division, Eastern Region. Formerly part of the Penn Central Transportation Company.

B) State: Located wholly in the state of Pennsylvania.

C) County: Located wholly in the county of Delaware.

D) Mileposts: Line extends approximately from milepost 0.0 at Lamokin to milepost 0.5 at Upland.

E) Stations: Lamokin, Pa., Upland, Pa.



Franklin Branch

CATEGORY 1

Lines or portions of lines which the carrier anticipates will be the subject of an abandonment or discontinuance application to be filed within a 3-year period.

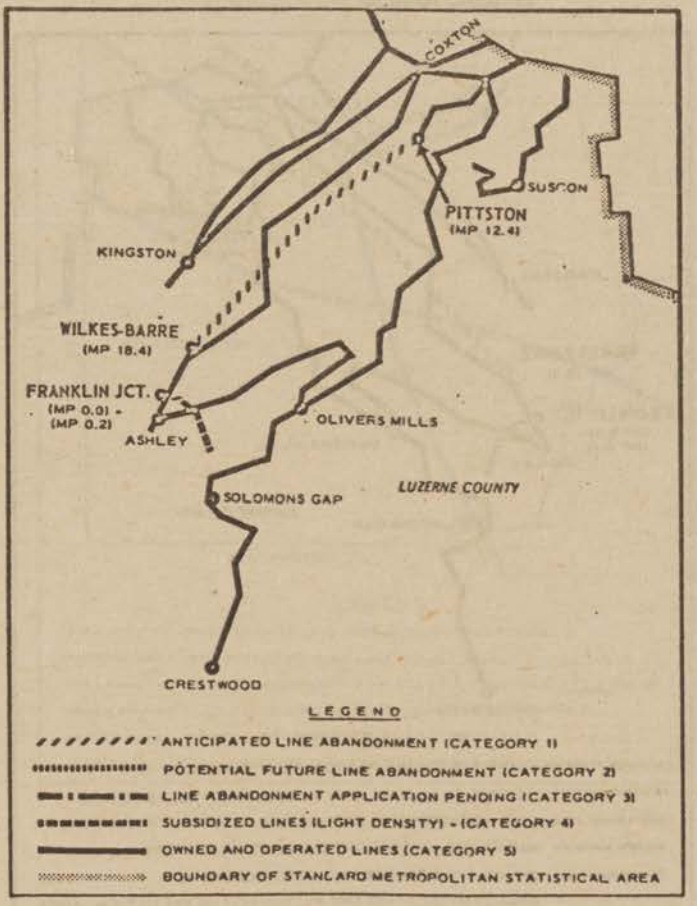
A) Designation: Franklin Branch (15630527), Lehigh Division, Atlantic Region. Formerly part of the Lehigh Valley Railroad Company.

B) State: Located wholly in the state of Pennsylvania.

C) County: Located wholly in the county of Luzerne.

D) Mileposts: Line extends from Franklin Junction approximately 0.2 mile to the vicinity of Hazle Street, at Wilkes-Barre, Pa.

E) Stations: None.



Scranton Branch

CATEGORY 1

Lines or portions of lines which the carrier anticipates will be the subject of an abandonment or discontinuance application to be filed within a 3-year period.

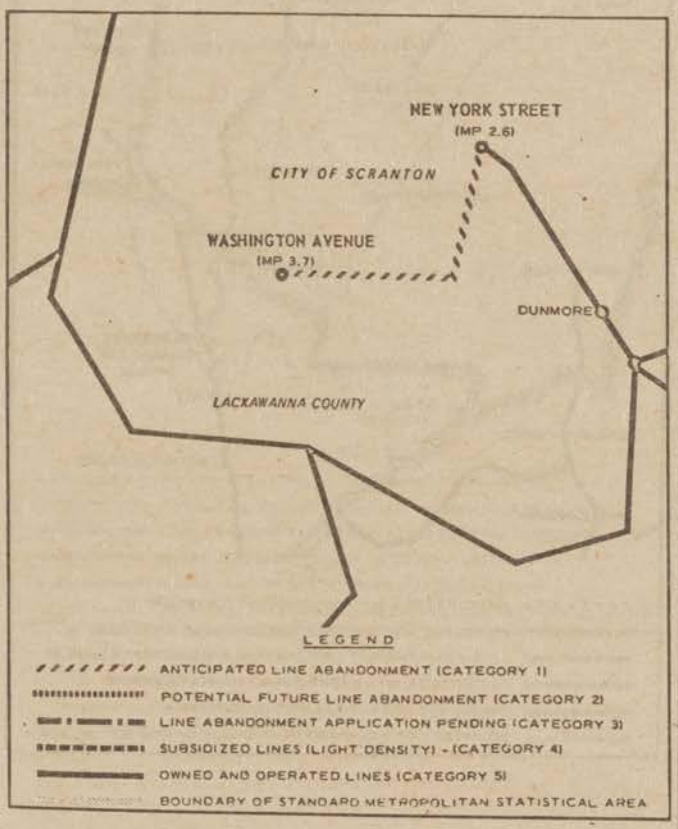
A) Designation: Scranton Branch, Pennsylvania (15626256A), Hoboken Division, Atlantic Region. Formerly part of the Erie Lackawanna Railway Company.

B) State: Located wholly in the state of Pennsylvania.

C) County: Located wholly in the county of Lackawanna.

D) Mileposts: Line extends approximately from milepost 2.6 at New York Street to milepost 3.7 at Washington Avenue in Scranton.

E) Stations: Partial Scranton, Pa.



L&NE - North Catasauqua

CATEGORY 1

Lines or portions of lines which the carrier anticipates will be the subject of an abandonment or discontinuance application to be filed within a 3-year period.

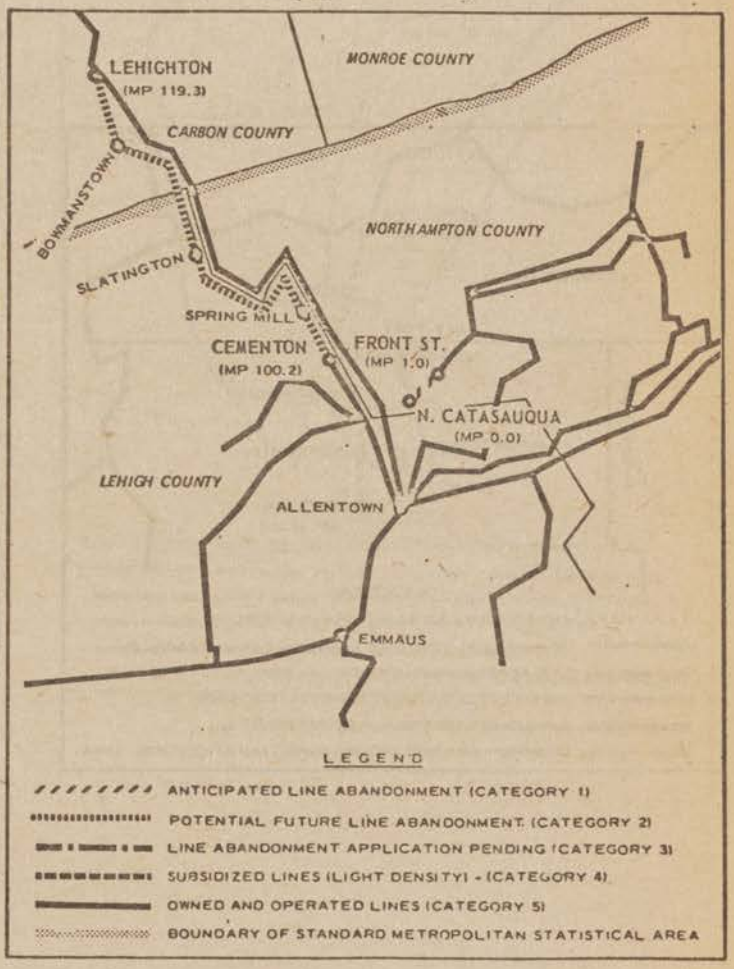
A) Designation: Former Lehigh and New England at Catasauqua (15630224E), Lehigh Division, Atlantic Region. Formerly part of the Lehigh and New England Railway.

B) State: Located wholly in the state of Pennsylvania.

C) County: Located wholly in the county of Northampton.

D) Mileposts: Line extends approximately from milepost 0.0 at North Catasauqua to milepost 1.0 at Front Street.

E) Stations: None.



Bradford Branch

CATEGORY 1

Lines or portions of lines which the carrier anticipates will be the subject of an abandonment or discontinuance application to be filed within a 3-year period.

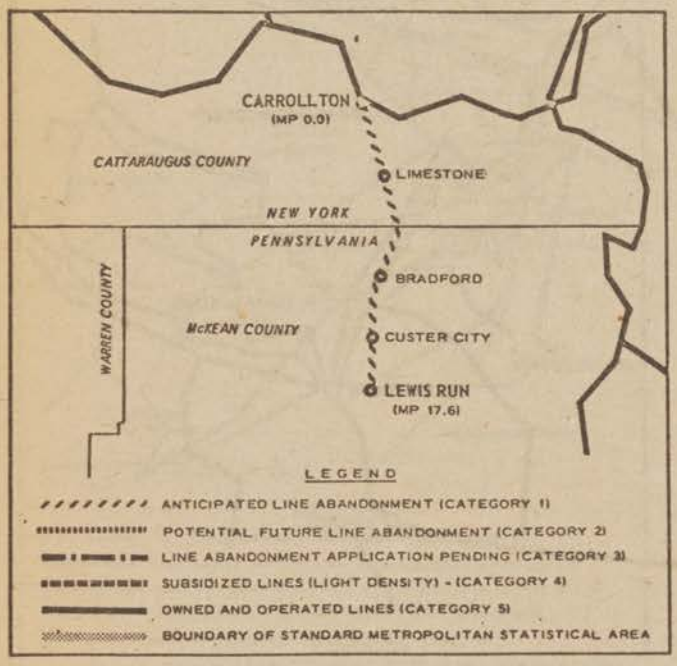
A) Designation: Bradford Branch (44256552), Youngstown Division, Central Region. Formerly part of the Erie Lackawanna Railway Company.

B) State: Located wholly in the states of New York and Pennsylvania.

C) County: Located in the counties of Cattaraugus (NY) and McKean (PA).

D) Mileposts: Line extends approximately from milepost 0.0 at Carrollton, New York to milepost 17.6 at Lewis Run, Pennsylvania.

E) Stations: Carrollton, N.Y., Limestone, N.Y., Bradford, Pa., Custer City, Pa., Lewis Run, Pa.



Torrington Secondary

CATEGORY 2

Lines or portions of lines potentially subject to abandonment which the carrier has under study and believes may be the subject of future abandonment applications.

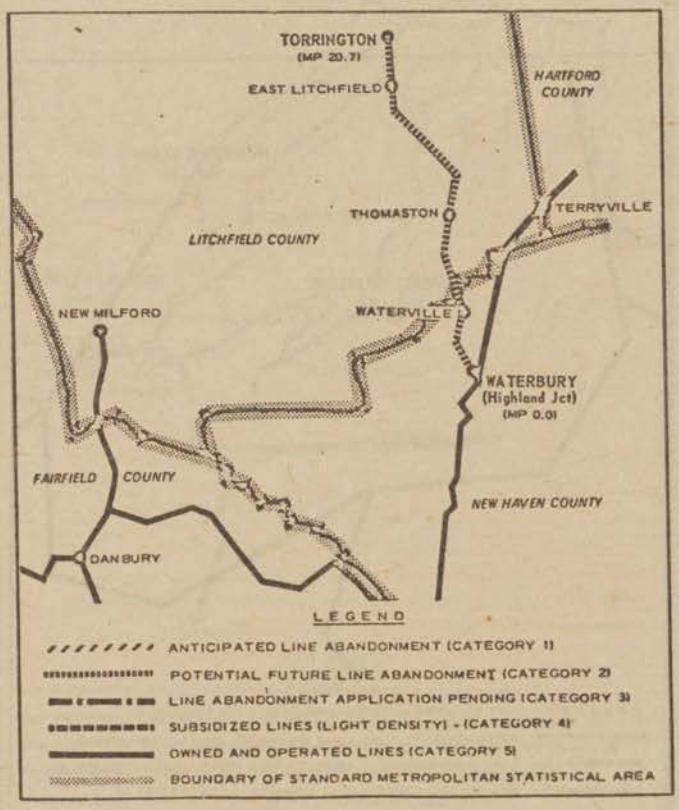
A) Designation: Torrington Secondary (02414243), New England Division, Northeastern Region. Formerly part of the Penn Central Transportation Company.

B) State: Located wholly in the State of Connecticut.

C) County: Located in the counties of New Haven and Litchfield.

D) Mileposts: Line extends approximately from milepost 0.0 at Highland to milepost 20.7 at Torrington.

E) Stations: Waterville, Ct., Thomaston, Ct., East Litchfield, Ct., Torrington, Ct.



Cairo Branch

CATEGORY 2

Lines or portions of lines potentially subject to abandonment which the carrier has under study and believes may be the subject of future abandonment applications.

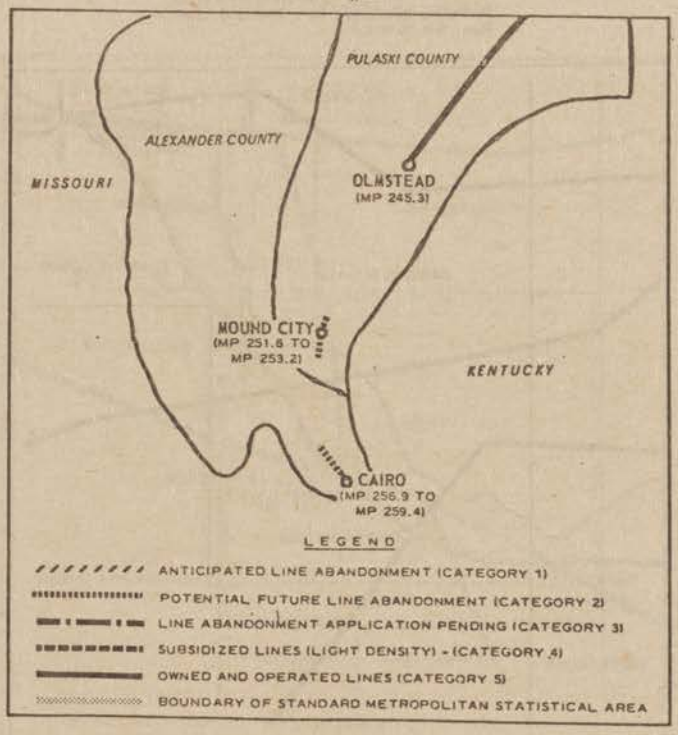
A) Designation: Cairo Branch at Mound City (05838432P), Southwest Division, Southern Region. Formerly part of the Penn Central Transportation Company.

B) State: Located wholly in the state of Illinois.

C) County: Located wholly in the county of Pulaski.

D) Mileposts: Line extends approximately from milepost 251.6 at Mound City to milepost 253.2 at Mound City.

E) Stations: Mound City, Ill.



Cairo Branch

CATEGORY 2

Lines or portions of lines potentially subject to abandonment which the carrier has under study and believes may be the subject of future abandonment applications.

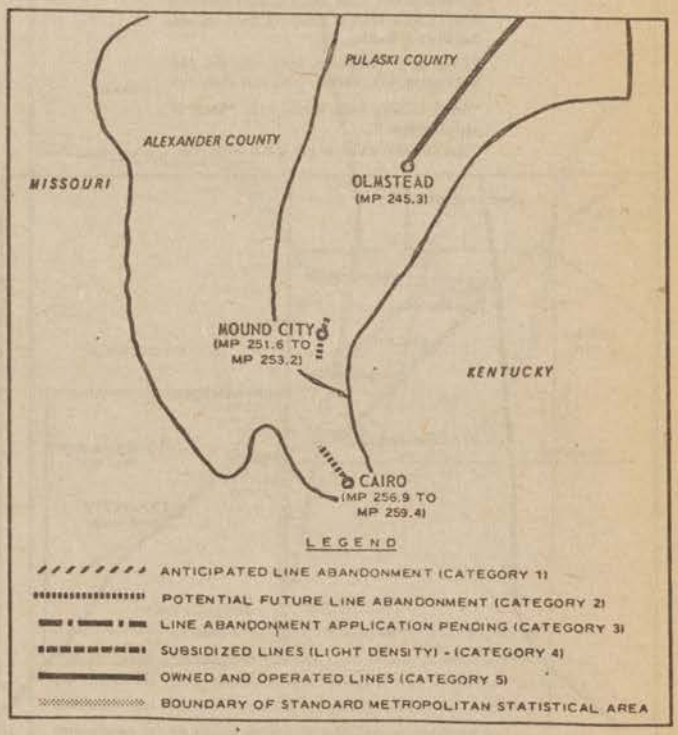
A) Designation: Cairo Branch at Cairo (05838432Q), Southwest Division, Southern Region. Formerly part of the Penn Central Transportation Company.

B) State: Located wholly in the state of Illinois.

C) County: Located wholly in the county of Alexander.

D) Mileposts: Line extends approximately from milepost 256.9 at Cairo to milepost 259.4 at Cairo.

E) Stations: Cairo, Ill.



Lafayette Branch

CATEGORY 2

Lines or portions of lines potentially subject to abandonment which the carrier has under study and believes may be the subject of future abandonment applications.

A) Designation: Lafayette Branch (31838312), Southwest Division, Southern Region. Formerly part of the Penn Central Transportation Company. Line between Lafayette and Templeton is owned by and will continue to be operated by the Norfolk and Western Railroad.

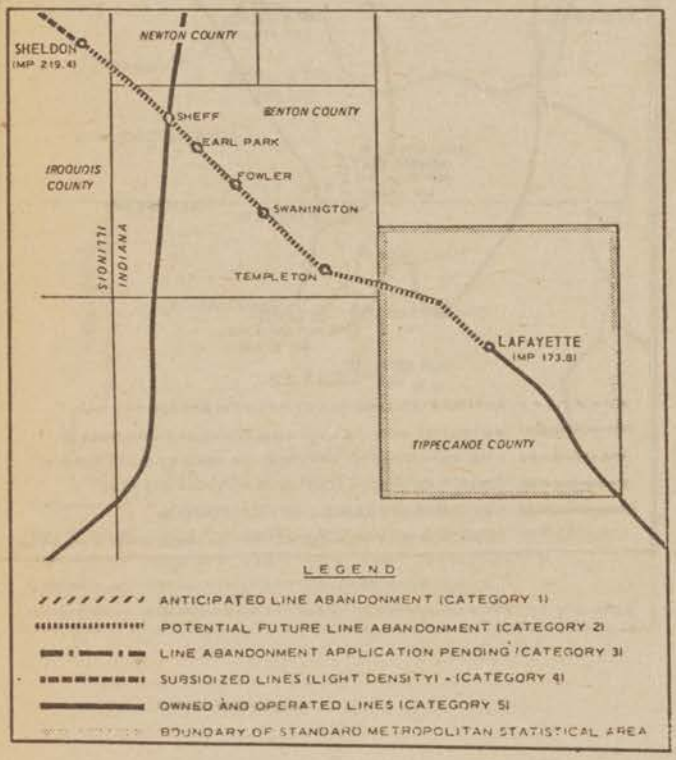
B) State: Located in the states of Indiana and Illinois.

C) County: Located in the Indiana counties of Benton, Tippecanoe and Newton; and in the Illinois county of Iroquois.

D) Mileposts: Line extends approximately from milepost 173.8 at Lafayette, Ind., to milepost 219.4 at Sheldon, Ill.

E) Stations: Templeton, Ind., Atkinson, Ind., Swanington, Ind., Fowler, Ind., Earl Park, Ind., *Sheff CCCL, Ind., Raub, Ind., *Sheff N., Ind., Sheldon, Ill.

*includes only traffic on this line at Sheff, Ind.



Kankakee Branch

CATEGORY 2

Lines or portions of lines potentially subject to abandonment which the carrier has under study and believes may be the subject of future abandonment applications.

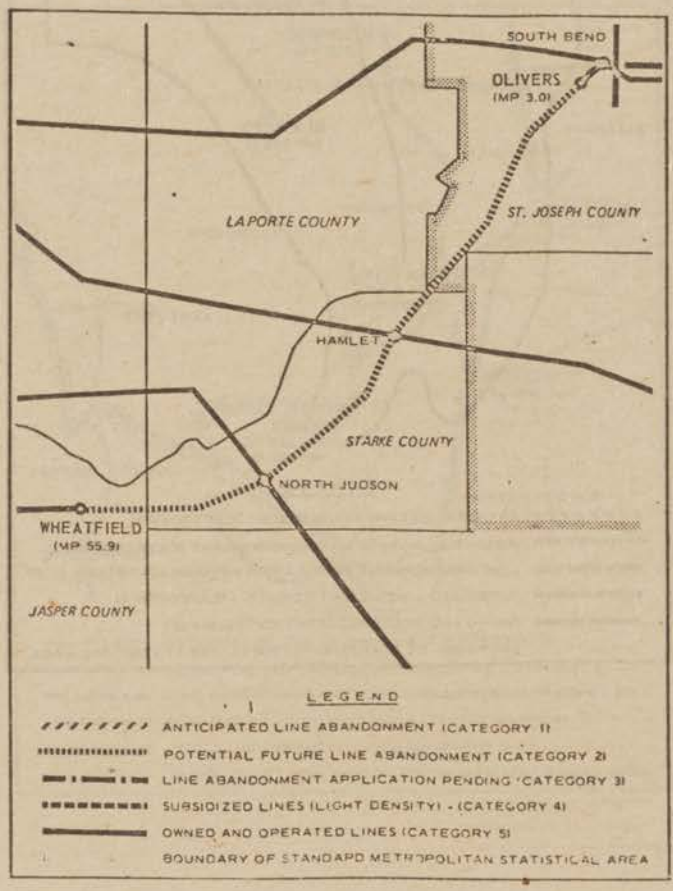
A) Designation: Kankakee Branch (06323123), Chicago Division, Western Region. Formerly part of the Penn Central Transportation Company.

B) State: Located wholly in the state of Indiana.

C) County: Located in the counties of St. Joseph, Starke and Jasper.

D) Mileposts: Line extends approximately from milepost 3.0 at Olivers to milepost 55.9 at Wheatfield.

E) Stations: Rupel, Ind., N. Liberty, Ind., Walkerton, Ind., Knox, Ind., Toto, Ind., San Pierre, Ind., Teiff, Ind.



GR&I Branch

CATEGORY 2

Lines or portions of lines potentially subject to abandonment which the carrier has under study and believes may be the subject of future abandonment applications.

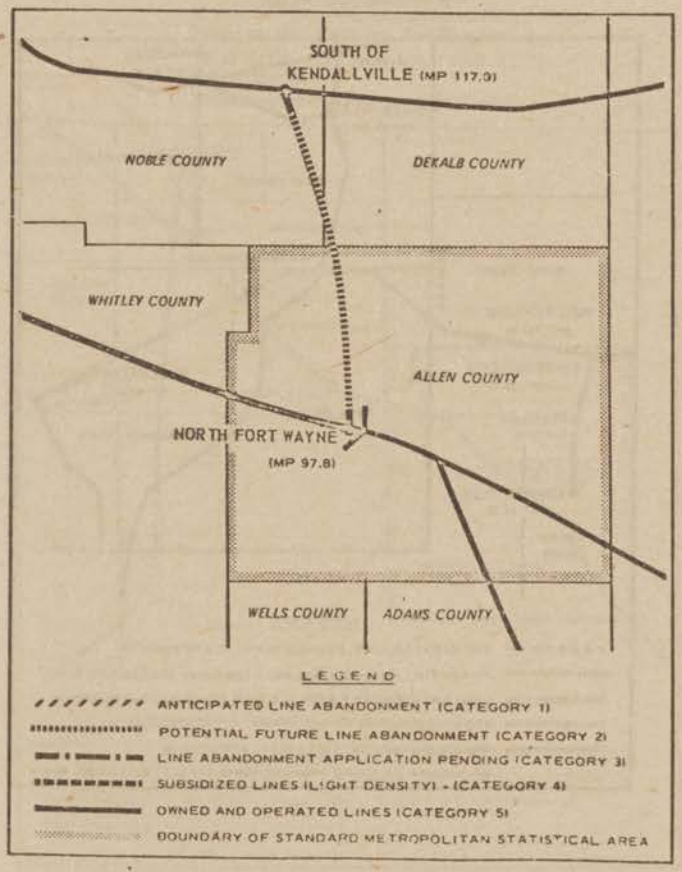
A) Designation: GR&I Branch (06313138), Ft. Wayne Division, Western Region. Formerly part of the Penn Central Transportation Company.

B) State: Located wholly in the state of Indiana.

C) County: Located in the counties of Allen, DeKalb, and Noble.

D) Mileposts: Line extends approximately from milepost 97.8 at North Ft. Wayne to milepost 117.0 south of Kendallville.

E) Stations: Wallen, Ind., Huntertown, Ind., LaOtto, Ind., Avilla, Ind.



Watson Running Track

CATEGORY 2

Lines or portions of lines potentially subject to abandonment which the carrier has under study and believes may be the subject of future abandonment applications.

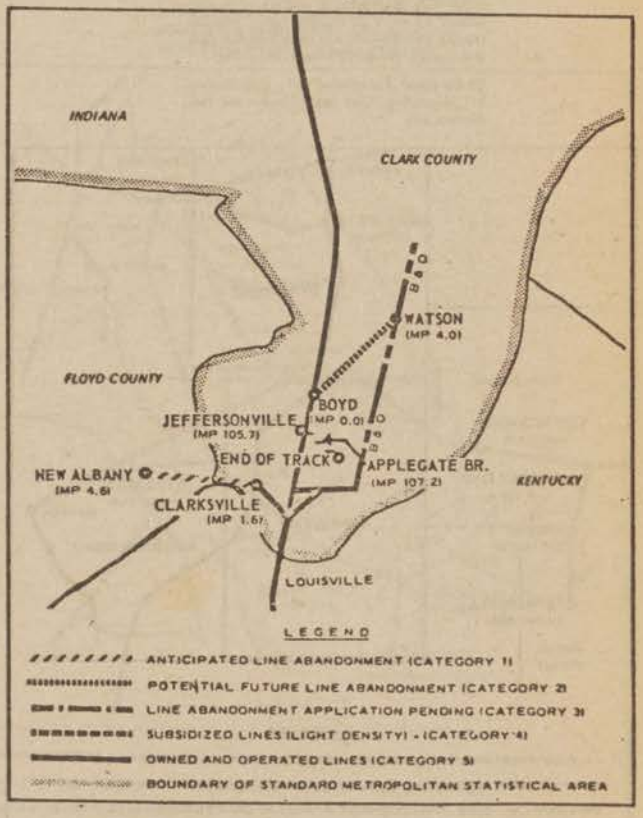
A) Designation: Watson Running Track (06838351), Southwest Division, Southern Region. Formerly part of the Penn Central Transportation Company.

B) State: Located wholly in the state of Indiana.

C) County: Located wholly in the county of Clark.

D) Mileposts: Line extends approximately from milepost 0.0 at Boyd to milepost 4.0 at Watson.

E) Stations: Charleston, Ind.



Indianapolis Main Line White Water Running Track

CATEGORY 2

Lines or portions of lines potentially subject to abandonment which the carrier has under study and believes may be the subject of future abandonment applications.

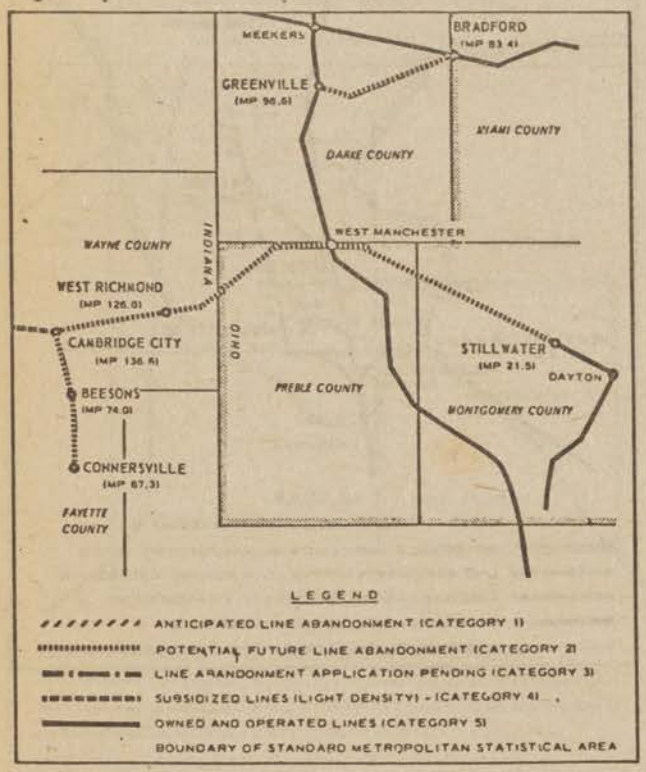
A) Designation: Indianapolis Main Line and White Water Running Track (06828345), Cincinnati Division, Southern Region. Formerly part of the Penn Central Transportation Company.

B) State: Located wholly in the state of Indiana.

C) County: Located in the counties of Wayne and Fayette.

D) Mileposts: Line extends approximately from milepost 126.0 at W. Richmond to milepost 136.6 at Cambridge City, and from Cambridge City to Beesons, a distance of approximately 9.2 miles of trackage rights over the Norfolk and Western, and from milepost 74.0 at Beesons to milepost 67.3 at Connersville.

E) Stations: Centerville, Ind., Germantown, Ind., Cambridge City, Ind., Connersville, Ind., Beesons, Ind.



Indianapolis-Dayton Main Track

CATEGORY 2

Lines or portions of lines potentially subject to abandonment which the carrier has under study and believes may be the subject of future abandonment applications.

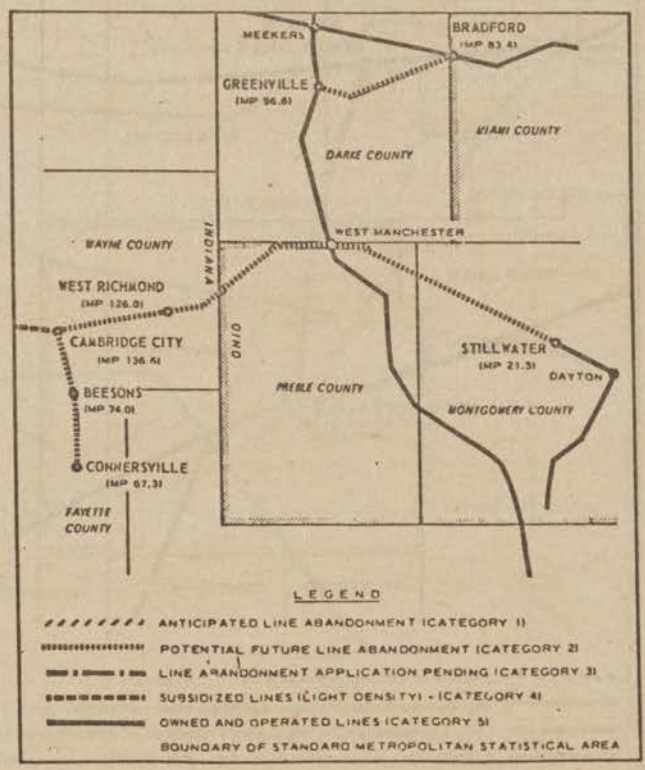
A) Designation: Indianapolis-Dayton Main Line (35828214), Cincinnati Division, Southern Region. Formerly part of the Penn Central Transportation Company.

B) State: Located wholly in the states of Ohio and Indiana.

C) County: Located in the counties of Montgomery and Preble in Ohio and in the county of Wayne in Indiana.

D) Mileposts: Line extends approximately from milepost 21.5 at Stillwater (Jct.), O., to milepost 126.0 at W. Richmond, Ind., a distance of 41.5 miles.

E) Stations: Trotwood, Ohio, Brookville, Ohio, West Manchester, Ohio, Eldorado, Ohio, New Paris, Ohio, Richmond, Ind.



Lafayette Branch

CATEGORY 2

Lines or portions of lines potentially subject to abandonment which the carrier has under study and believes may be the subject of future abandonment applications.

A) Designation: Lafayette Branch (31838312), Southwest Division, Southern Region. Formerly part of the Penn Central Transportation Company. Line between Lafayette and Templeton is owned by and will continue to be operated by the Norfolk and Western Railroad.

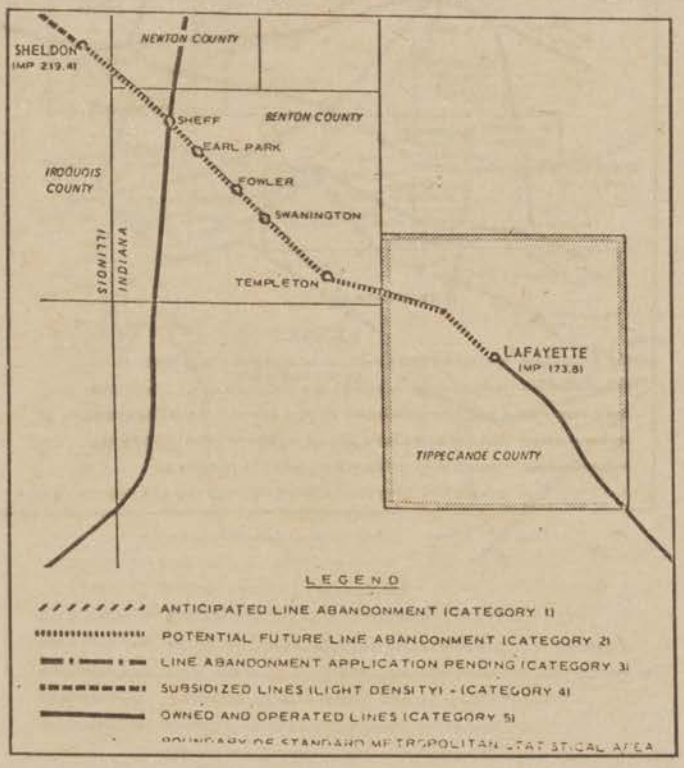
B) State: Located in the states of Indiana and Illinois.

C) County: Located in the Indiana counties of Benton, Tippecanoe and Newton; and in the Illinois county of Iroquois.

D) Mileposts: Line extends approximately from milepost 173.8 at Lafayette, Ind., to milepost 219.4 at Sheldon, Ill.

E) Stations: Templeton, Ind., Atkinson, Ind., Swanington, Ind., Fowler, Ind., Earl Park, Ind., *Sheff CCCL, Ind., Raub, Ind., *Sheff N., Ind., Sheldon, Ill.

*includes only traffic on this line at Sheff, Ind.



Plymouth Secondary

CATEGORY 2

Lines or portions of lines potentially subject to abandonment which the carrier has under study and believes may be the subject of future abandonment applications.

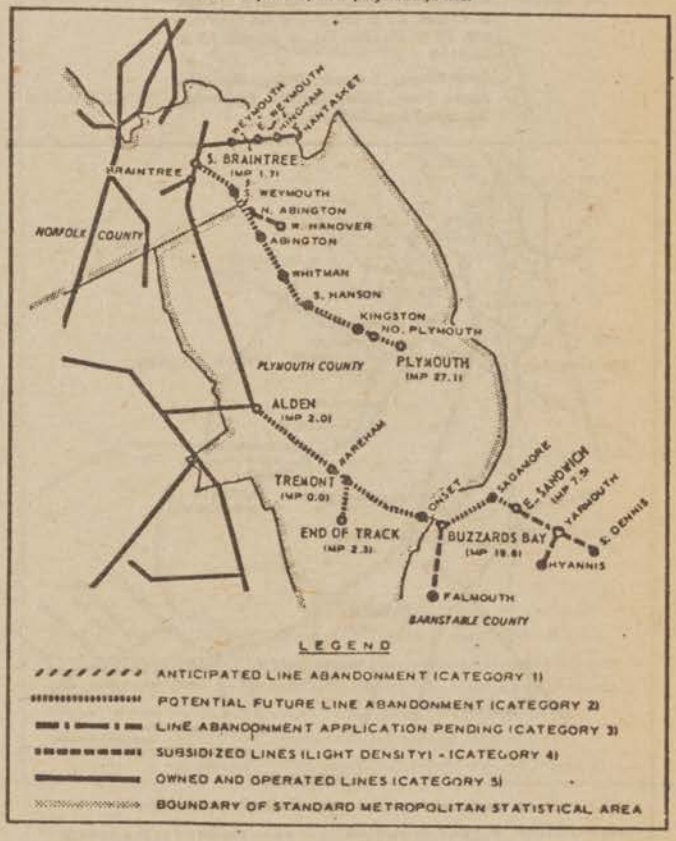
A) Designation: Plymouth Secondary (09414185), New England Division, Northeastern Region. Formerly part of the Penn Central Transportation Company.

B) State: Located wholly in the state of Massachusetts.

C) County: Located in the counties of Norfolk and Plymouth.

D) Mileposts: Line extends approximately from milepost 1.7 at S. Braintree to milepost 27.1 at Plymouth.

E) Stations: South Weymouth, Mass., North Abington, Mass., Abington, Mass., Whitman, Mass., South Hanson, Mass., Kingston, Mass., North Plymouth, Mass., Plymouth, Mass.



Buzzards Bay Secondary
Fairhaven Industrial Track
Hyannis Secondary

CATEGORY 2

Lines or portions of lines potentially subject to abandonment which the carrier has under study and believes may be the subject of future abandonment applications.

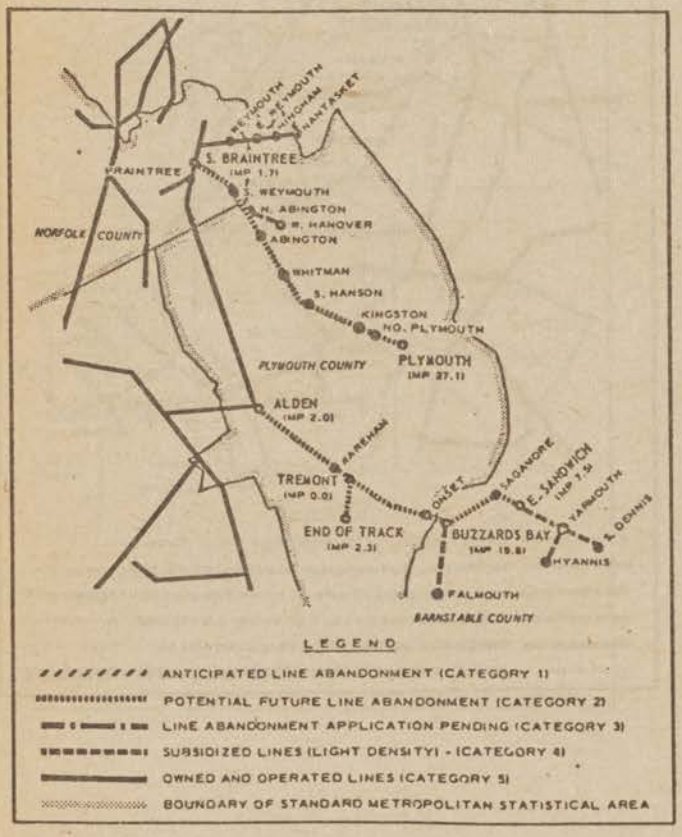
A) Designations: Buzzards Bay Secondary; Fairhaven Industrial Track; Hyannis Secondary (09414178), New England Division, Northeastern Region. Formerly part of the Penn Central Transportation Company.

B) State: Located wholly in the state of Massachusetts.

C) County: Located in the counties of Plymouth and Barnstable.

D) Mileposts: Line extends approximately from milepost 2.0 at Alden to milepost 19.8 at Buzzards Bay; from milepost 0.0 at Tremont to milepost 2.3 at end of line; and from milepost 0.0 at Buzzards Bay to milepost 7.5 at Sandwich.

E) Stations: Tremont, Mass., Wareham, Mass., Onset, Mass., Buzzards Bay, Mass., Sagamore, Mass., Sandwich, Mass.



Elkhart Branch

CATEGORY 2

Lines or portions of lines potentially subject to abandonment which the carrier has under study and believes may be the subject of future abandonment applications.

A) Designation: Elkhart Branch (10535321), Michigan Division, Northern Region. Formerly part of the Penn Central Transportation Company.

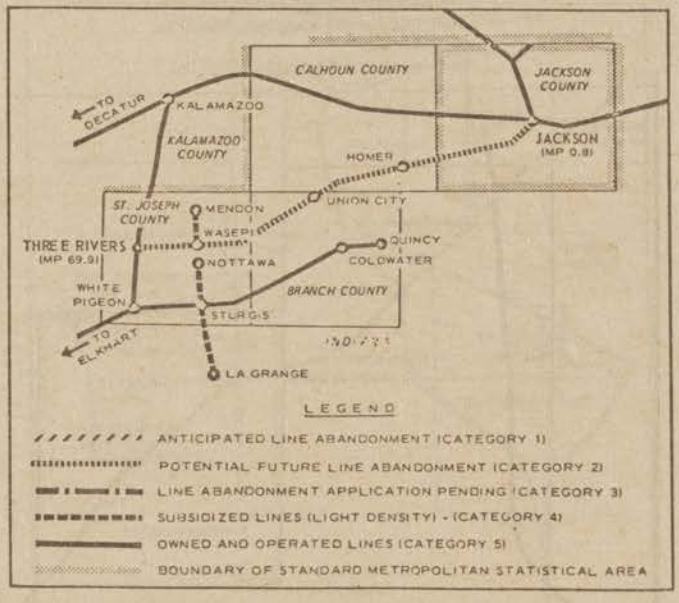
B) State: Located wholly in the state of Michigan.

C) County: Located in the counties of Jackson, Calhoun, Branch and St. Joseph.

D) Mileposts: Line extends approximately from milepost 0.8 at Jackson (CP"OD"), to milepost 69.9 at Three Rivers.

E) Stations: Centerville, Mich., Colon, Mich., Union City, Mich., Tekonsha, Mich., Homer, Mich., Concord, Mich., Spring Arbor, Mich., *Jackson, Mich.

*Includes only traffic on this line and not all traffic at Jackson, Mich.



Phillipsburg Line

CATEGORY 2

Lines or portions of lines potentially subject to abandonment which the carrier has under study and believes may be the subject of future abandonment applications.

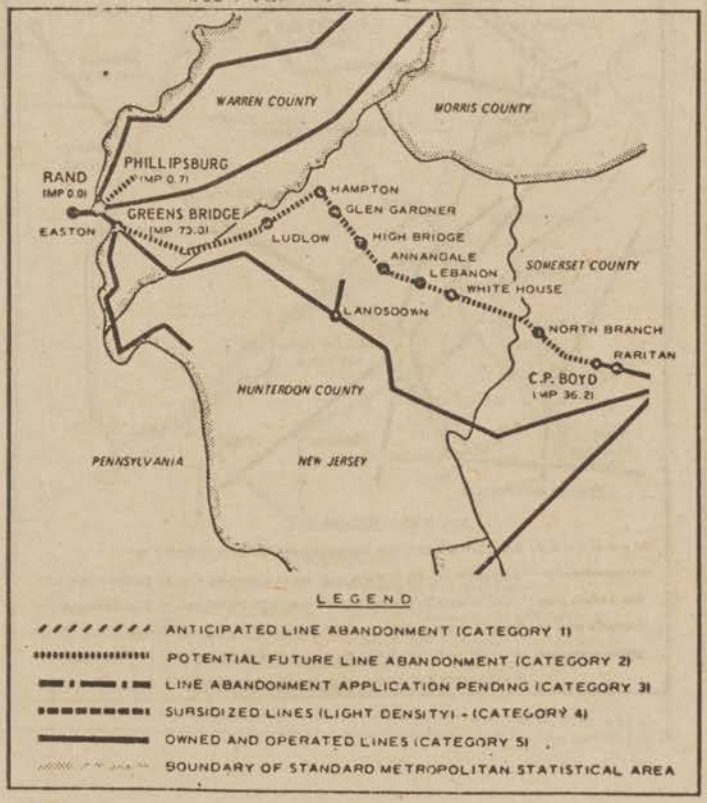
A) Designation: Phillipsburg Line (12630201), Lehigh Division, Atlantic Region. Formerly part of the Central Railroad of New Jersey.

B) State: Located wholly in the state of New Jersey.

C) County: Located in the counties of Somerset, Hunterdon and Warren.

D) Mileposts: Line extends approximately from milepost 36.2 at C. P. Boyd to milepost 70.0 at Greens Bridge.

E) Stations: North Branch, N.J., White House, N.J., Lebanon, N.J., Annandale, N.J., High Bridge, N.J., Glen Gardner, N.J., Hampton, N.J., Ludlow, N.J., Bloomsbury, N.J., Valley, N.J., Springtown, N.J., Vulcanite, N.J.



Eatontown Branch

CATEGORY 2

Lines or portions of lines potentially subject to abandonment which the carrier has under study and believes may be the subject of future abandonment applications.

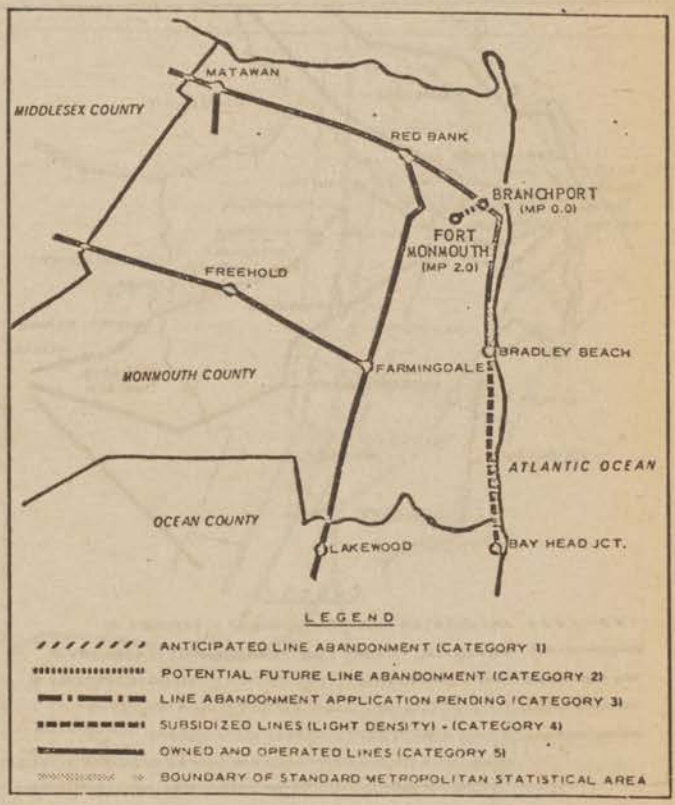
A) Designation: Eatontown Branch (12640253), New Jersey Division, Atlantic Region. Formerly a part of the Central Railroad of New Jersey.

B) State: Located wholly in the state of New Jersey.

C) County: Located wholly in the county of Monmouth.

D) Mileposts: Line extends approximately from milepost 0.0 at Branchport to milepost 2.0 at Fort Monmouth.

E) Stations: None.



Ingersol Branch

CATEGORY 2

Lines or portions of lines potentially subject to abandonment which the carrier has under study and believes may be the subject of future abandonment applications.

A) Designation: Ingersol Branch (12630246), Lehigh Division, Atlantic Region. Formerly part of the Central Railroad of New Jersey.

B) State: Located wholly in the state of New Jersey.

C) County: Located wholly in the county of Warren.

D) Mileposts: Line extends approximately from milepost 0.0 at Rand to milepost 0.7 at Phillipsburg.

E) Stations: None.

Petty Island Branch

CATEGORY 2

Lines or portions of lines potentially subject to abandonment which the carrier has under study and believes may be the subject of future abandonment applications.

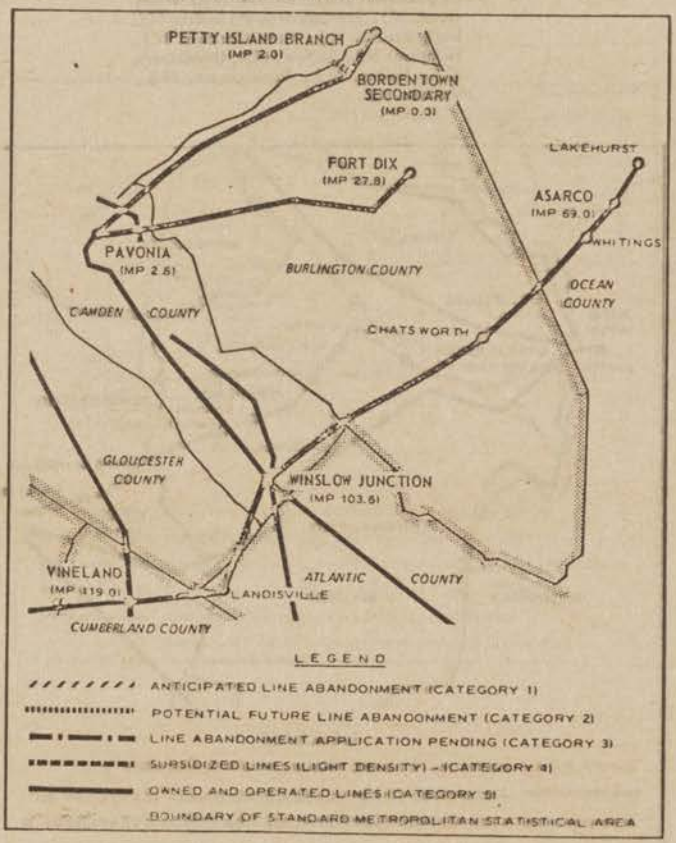
A) Designation: Petty Island Branch (12111167), Philadelphia Division, Eastern Region. Formerly part of the Penn Central Transportation Company.

B) State: Located wholly in the state of New Jersey.

C) County: Located wholly in the county of Burlington.

D) Mileposts: Line extends approximately from milepost 0.0 at Bordentown Secondary to milepost 2.0 at Petty Island.

E) Stations: Petty Island, N.J.



Old Road Branch

CATEGORY 2

Lines or portions of lines potentially subject to abandonment which the carrier has under study and believes may be the subject of future abandonment applications.

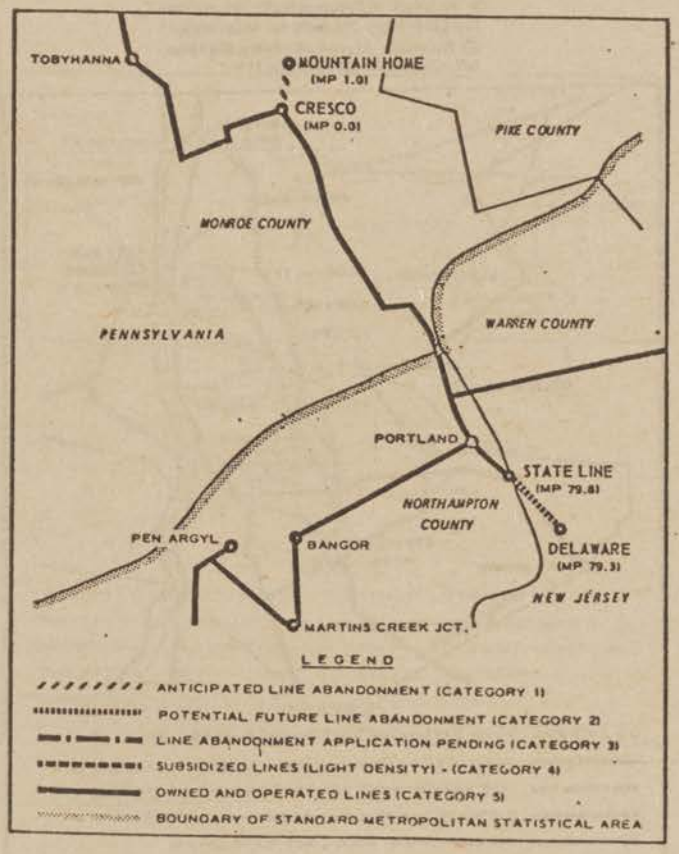
A) Designation: Old Road Branch (15626242), Hoboken Division, Atlantic Region. Formerly a part of the Erie Lackawanna Railway Company.

B) State: Located in the states of Pennsylvania and New Jersey.

C) County: Located in the county of Northampton in Pennsylvania and the county of Warren in New Jersey.

D) Mileposts: Line extends approximately from milepost 79.3 at Delaware to milepost 79.8 at the New Jersey/Pennsylvania state line.

E) Stations: None.



Putnam Industrial Track

CATEGORY 2

Lines or portions of lines potentially subject to abandonment which the carrier has under study and believes may be the subject of future abandonment applications.

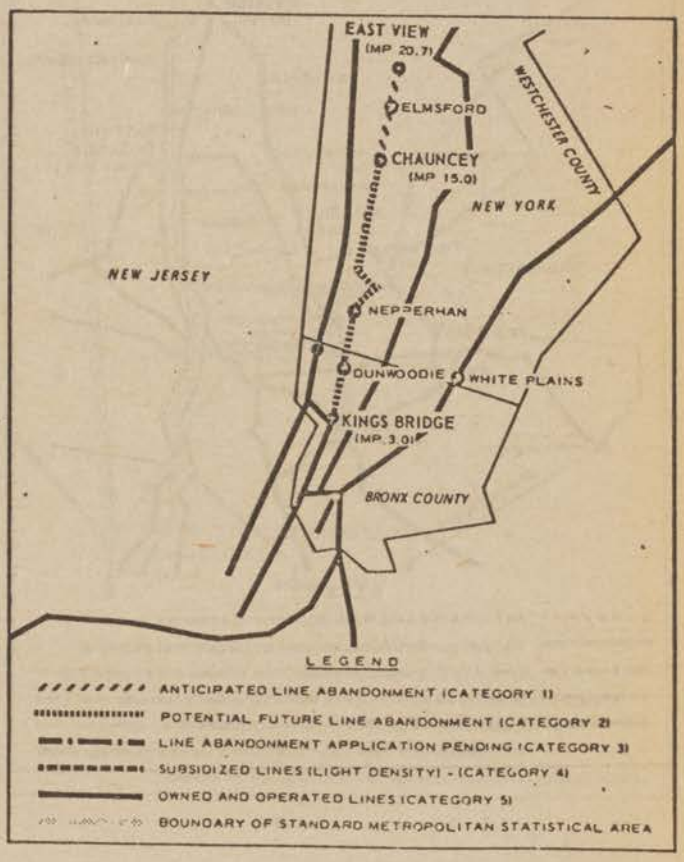
A) Designation: Putnam Industrial Track (13474233), Mohawk-Hudson Division, Northeastern Region. Formerly part of the Penn Central Transportation Company.

B) State: Located wholly in the state of New York.

C) County: Located in the counties of Bronx and Westchester.

D) Mileposts: Line extends approximately from milepost 3.0 at Kings Bridge to milepost 15.0 at Chauncey.

E) Stations: Kings Bridge, N.Y., Dunwoodie, N.Y., Nepperhan, N.Y., Chauncey, N.Y.



Wallkill Valley Branch

CATEGORY 2

Lines or portions of lines potentially subject to abandonment which the carrier has under study and believes may be the subject of future abandonment applications.

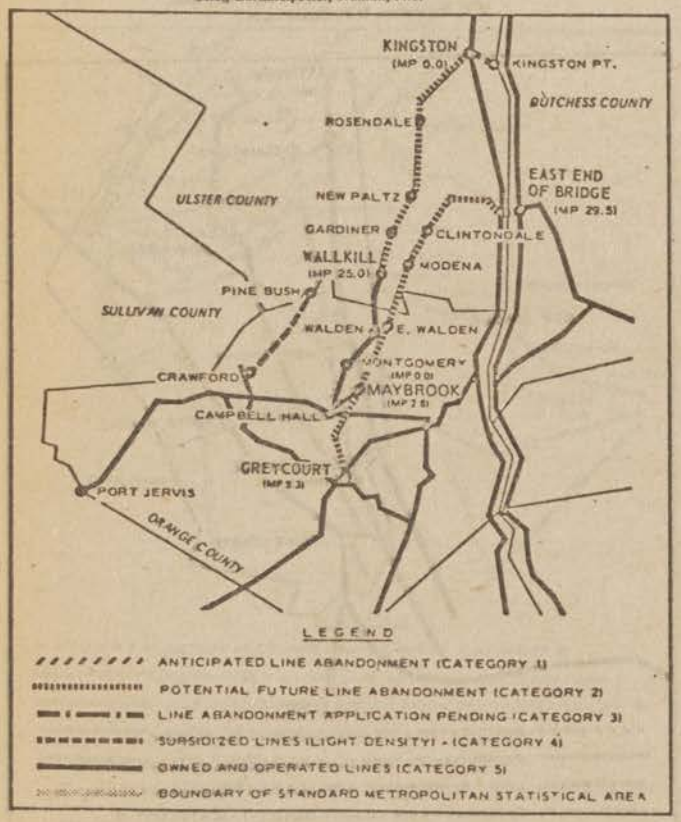
A) Designation: Wallkill Valley Branch (13641435), New Jersey Division, Atlantic Region. Formerly part of the Penn Central Transportation Company.

B) State: Located wholly in the state of New York.

C) County: Located wholly in the county of Ulster.

D) Mileposts: Line extends approximately from milepost 0.0 at Kingston to milepost 25.0 at Wallkill.

E) Stations: Rosendale, N.Y., New Paltz, N.Y., Gardiner, N.Y., Wallkill, N.Y.



L&HR Main Line and Maybrook Branch

CATEGORY 2

Lines or portions of lines potentially subject to abandonment which the carrier has under study and believes may be the subject of future abandonment applications.

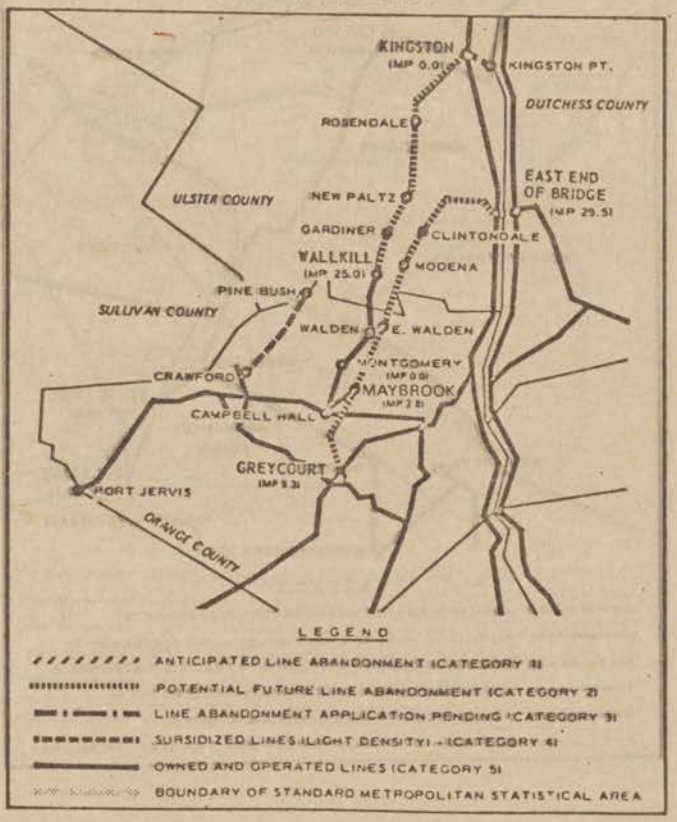
A) Designation: Lehigh and Hudson River Main Line and Maybrook Branch (13410101), Lehigh Division, Atlantic Region and New England Division, Northeastern Region. Formerly part of the Lehigh and Hudson River Railway Company and the Penn Central Transportation Company.

B) State: Located wholly in the state of New York.

C) County: Located in the counties of Orange and Ulster.

D) Mileposts: Line extends approximately from milepost 9.3 at Greycourt to milepost 0.0 at Maybrook and from milepost 2.8 at Maybrook to milepost 29.5 at the east end of bridge.

E) Stations: Maybrook, N.Y., Highland, N.Y., Clintondale, N.Y., Modena, N.Y.



Rochester Branch

CATEGORY 2

Lines or portions of lines potentially subject to abandonment which the carrier has under study and believes may be the subject of future abandonment applications.

A) Designation: Rochester Branch (13480614), Buffalo Division, Northeastern Region. Formerly part of the Lehigh Valley Railroad Company.

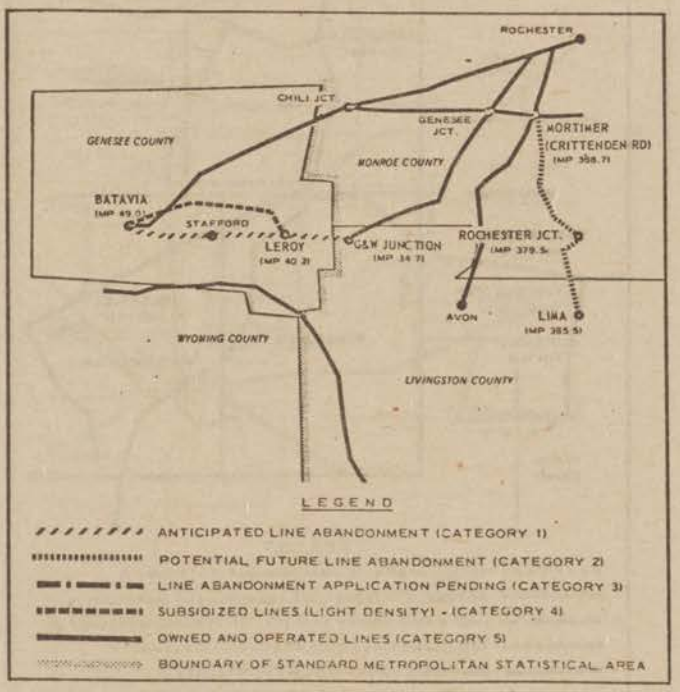
B) State: Located wholly in the state of New York.

C) County: Located in the counties of Monroe and Livingston.

D) Mileposts: Line extends approximately from milepost 385.5 at Lima to milepost 379.5 at Rochester Junction and from milepost 379.5 at Rochester Junction to milepost 388.7 at Mortimer (Crittenden Rd.).

E) Stations: Lima, N.Y., Honeoye Falls, N.Y., Henrietta, N.Y., Rochester, * N.Y.

*Includes only traffic on this line and not all traffic at Rochester, N.Y.



Utica Branch

CATEGORY 2

Lines or portions of lines potentially subject to abandonment which the carrier has under study and believes may be the subject of future abandonment applications.

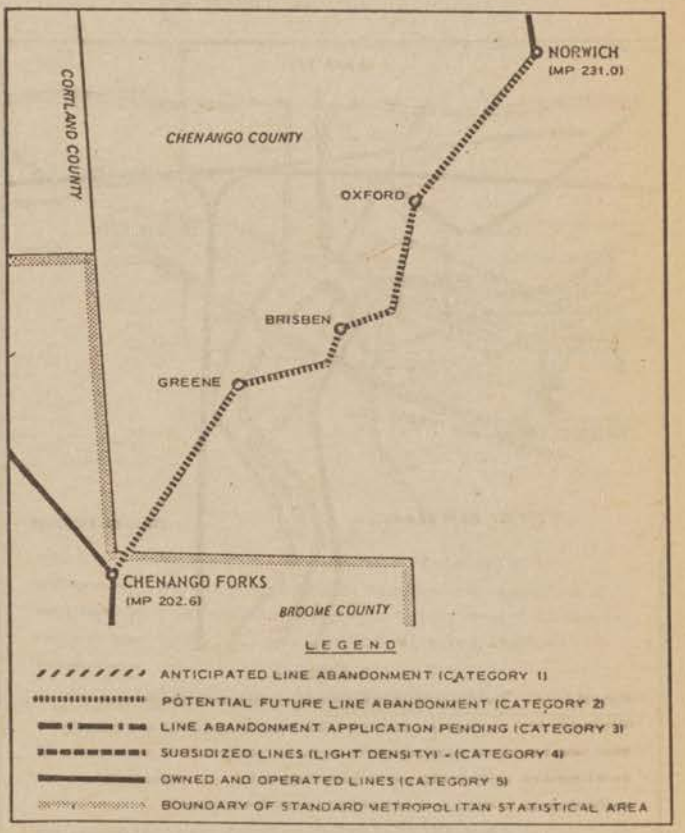
A) Designation: Utica Branch (13666252B), Susquehanna Division, Atlantic Region. Formerly part of the Erie Lackawanna Railway Company.

B) State: Located wholly in the state of New York.

C) County: Located in the counties of Broome and Chenango.

D) Mileposts: Line extends approximately from milepost 202.6 at Chenango Forks to milepost 231.0 at Norwich.

E) Stations: Greene, N.Y., Brisben, N.Y., Oxford, N.Y.



Erie Dock

CATEGORY 2

Lines or portions of lines potentially subject to abandonment which the carrier has under study and believes may be the subject of future abandonment applications.

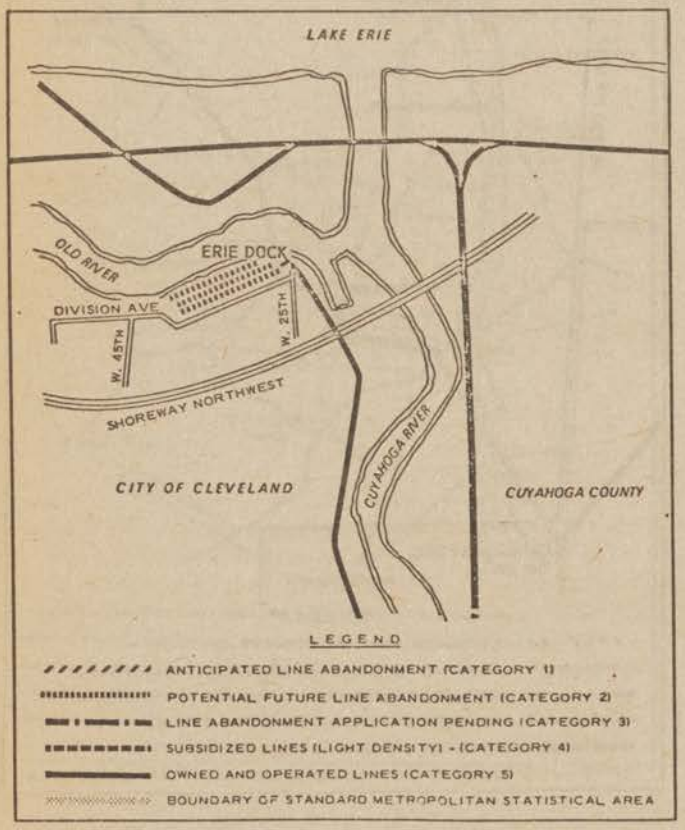
A) Designation: Erie Dock (14256502), Cleveland Division, Western Region. Formerly part of the Erie Lackawanna Railway Company.

B) State: Located wholly in the state of Ohio.

C) County: Located wholly in the county of Cuyahoga.

D) Mileposts: Line extends approximately from W. 25th Street to W. 45th Street at Cleveland.

E) Stations: None.



Greenville Secondary

CATEGORY 2

Lines or portions of lines potentially subject to abandonment which the carrier has under study and believes may be the subject of future abandonment applications.

A) Designation: Greenville Secondary (14828206), Cincinnati Division, Southern Region. Formerly part of the Penn Central Transportation Company.

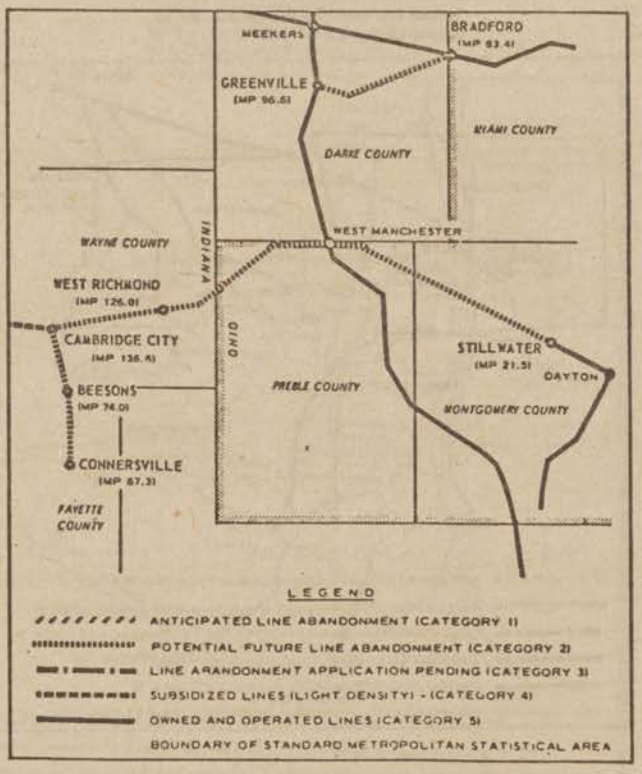
B) State: Located wholly in the state of Ohio.

C) County: Located wholly in the county of Darke.

D) Mileposts: Line extends approximately from milepost 83.4 at Bradford to milepost 96.6 at Greenville.

E) Stations: *Bradford, Ohio, Gettysburg, Ohio, Greenville, Ohio.

*Includes only Bradford traffic on this line.



Mt. Vernon Secondary

CATEGORY 2

Lines or portions of lines potentially subject to abandonment which the carrier has under study and believes may be the subject of future abandonment applications.

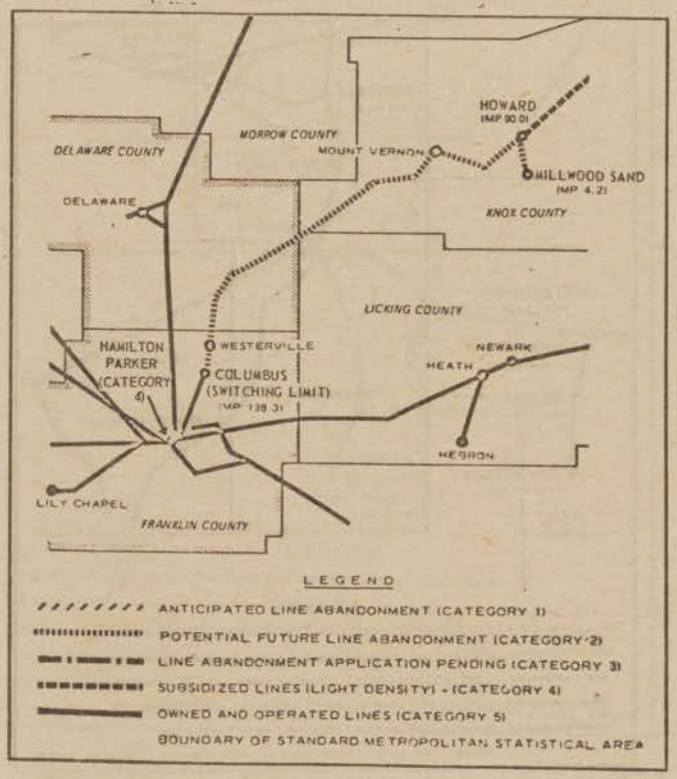
A) Designation: Mt. Vernon Secondary (14818137), Columbus Division, Southern Region. Formerly part of the Penn Central Transportation Company.

B) State: Located wholly in the state of Ohio.

C) County: Located in the counties of Franklin, Delaware, Licking and Knox.

D) Mileposts: Line extends approximately from milepost 138.0 at Columbus to milepost 90.0 at Howard and from milepost 0.0 at Howard to milepost 4.2 at Millwood Sand Co.

E) Stations: Howard, Ohio, Gambier, Ohio, Mt. Vernon, Ohio, Bangs, Ohio, Condit, Ohio, Sunbury, Ohio, Galena, Ohio, Westerville, Ohio.



Marion Branch

CATEGORY 2

Lines or portions of lines potentially subject to abandonment which the carrier has under study and believes may be the subject of future abandonment applications.

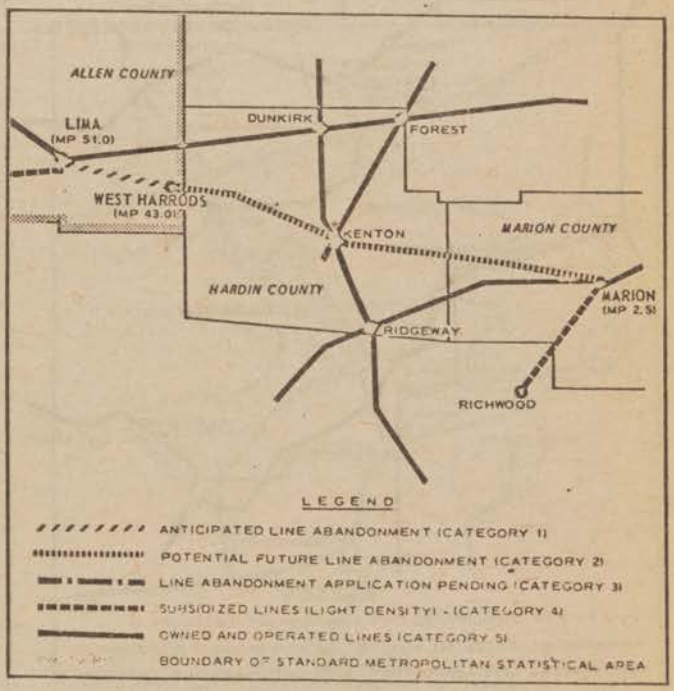
A) Designation: Marion Branch (14816601), Columbus Division, Southern Region. Formerly part of the Erie Lackawanna Railway Company.

B) State: Located wholly in the state of Ohio.

C) County: Located in the counties of Marion, Hardin and Allen.

D) Mileposts: Line extends approximately from milepost 2.5 at Marion to milepost 43.0 at West Harrods.

E) Stations: Swan Creek, Ohio, DeCliff, Ohio, Hepburn, Ohio, Kenton, Ohio, Foraker, Ohio, McGuffey, Ohio, Alger, Ohio, Harrod, Ohio.



Lisbon Branch

CATEGORY 2

Lines or portions of lines potentially subject to abandonment which the carrier has under study and believes may be the subject of future abandonment applications.

A) Designation: Lisbon Branch (14246563), Youngstown Division, Central Region. Formerly part of the Erie Lackawanna Railway Company.

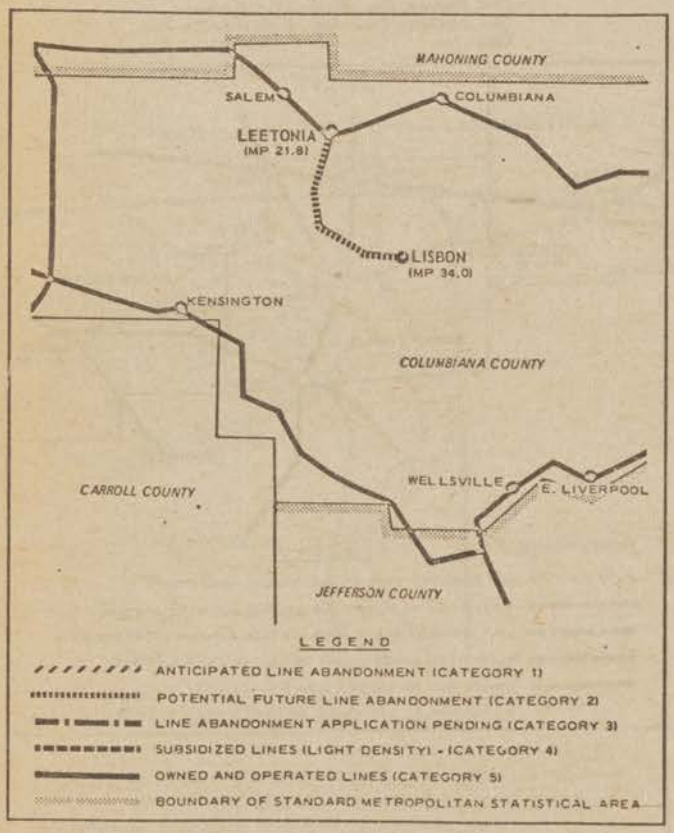
B) State: Located wholly in the state of Ohio.

C) County: Located wholly in the county of Columbiana.

D) Mileposts: Line extends approximately from milepost 21.8 at Leetonia to milepost 34.0 at Lisbon.

E) Stations: *Leetonia, Ohio, Lisbon, Ohio.

*Includes only Leetonia traffic on this line.



Indianapolis-Dayton Main Track

CATEGORY 2

Lines or portions of lines potentially subject to abandonment which the carrier has under study and believes may be the subject of future abandonment applications.

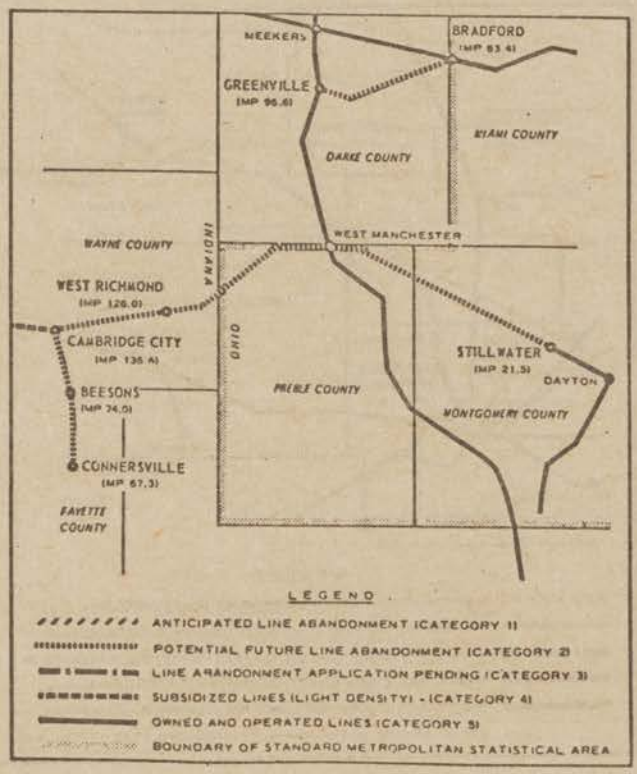
A) Designation: Indianapolis-Dayton Main Line (35828214), Cincinnati Division, Southern Region. Formerly part of the Penn Central Transportation Company.

B) State: Located wholly in the states of Ohio and Indiana.

C) County: Located in the counties of Montgomery and Preble in Ohio and in the county of Wayne in Indiana.

D) Mileposts: Line extends approximately from milepost 21.5 at Stillwater (Jct.), O., to milepost 126.0 at W. Richmond, Ind., a distance of 41.5 miles.

E) Stations: Trotwood, Ohio, Brookville, Ohio, West Manchester, Ohio, Eldorado, Ohio, New Paris, Ohio, Richmond, Ind.



Southwest Secondary

CATEGORY 2

Lines or portions of lines potentially subject to abandonment which the carrier has under study and believes may be the subject of future abandonment applications.

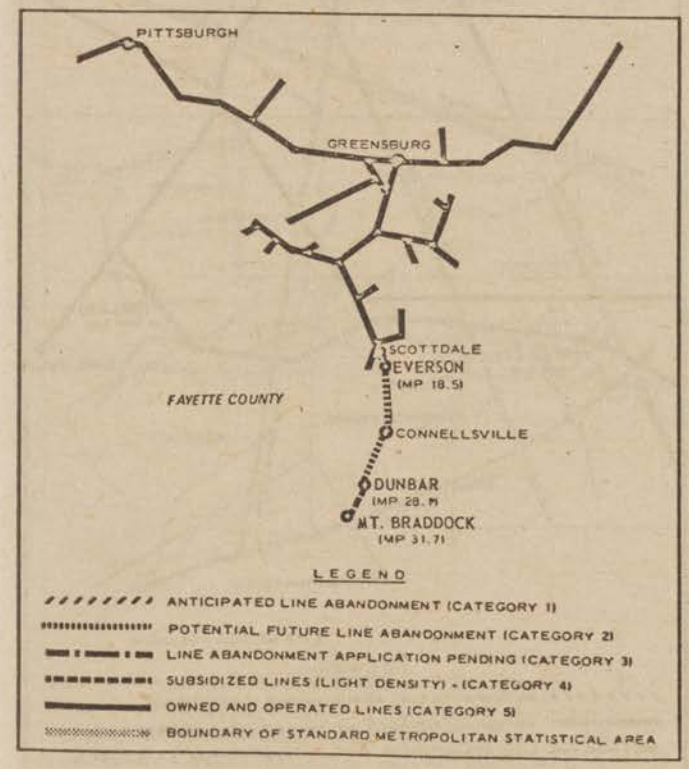
A) Designation: Southwest Secondary (15222217), Pittsburgh Division, Central Region. Formerly part of the Penn Central Transportation Company.

B) State: Located wholly in the state of Pennsylvania.

C) County: Located wholly in the county of Fayette.

D) Mileposts: Line extends approximately from milepost 18.5 at Everson to milepost 28.1 at Dunbar.

E) Stations: Connellsville, Pa., Watts Transfer, Pa., Dunbar, Pa.



Lehigh Valley Main Line
Lehighton-Cementon

CATEGORY 2

Lines or portions of lines potentially subject to abandonment which the carrier has under study and believes may be the subject of future abandonment applications.

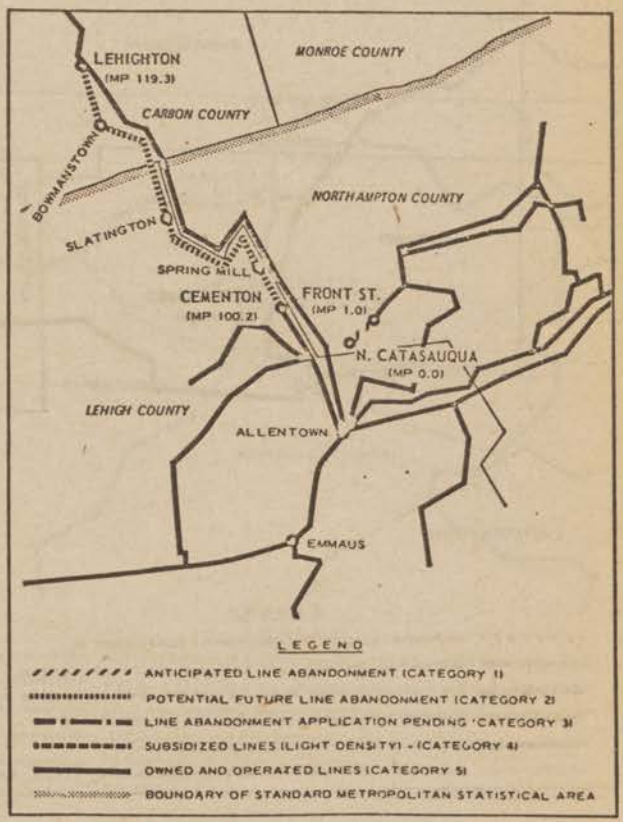
A) Designation: Lehigh Valley Main Line (15630501), Lehigh Division, Atlantic Region. Formerly part of the Lehigh Valley Railroad Company.

B) State: Located wholly in the state of Pennsylvania.

C) County: Located in the counties of Carbon and Lehigh.

D) Mileposts: Line extends approximately from milepost 100.2 at Cementon to milepost 119.3 at Lehighton.

E) Stations: Cementon, Pa., Spring Mill, Pa., Slatington, Pa., Lehigh Gap, Pa., Lizzard Creek Jct., Pa., Bowmanstown, Pa., Lehighton, Pa.



Emporium Secondary

CATEGORY 2

Lines or portions of lines potentially subject to abandonment which the carrier has under study and believes may be the subject of future abandonment applications.

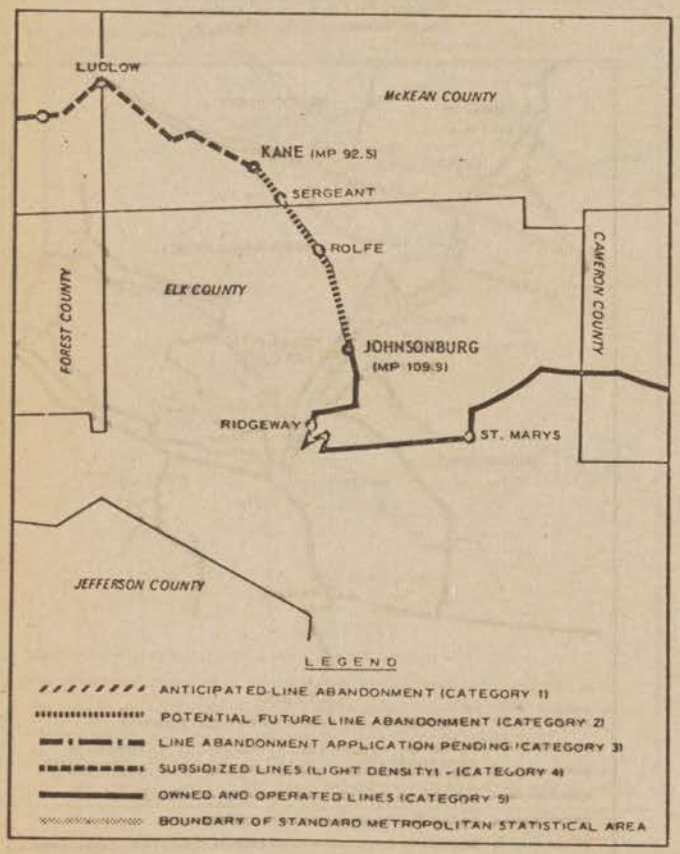
A) Designation: Emporium Secondary (15212315), Allegheny Division, Central Region. Formerly part of the Penn Central Transportation Company.

B) State: Located wholly in the state of Pennsylvania.

C) County: Located in the counties of McKean and Elk.

D) Mileposts: Line extends approximately from milepost 92.5 at Kane to milepost 109.9 at Johnsonburg.

E) Stations: Rolfe, Pa., Sergeant, Pa., Kane, Pa.



Plymouth Branch

CATEGORY 2

Lines or portions of lines potentially subject to abandonment which the carrier has under study and believes may be the subject of future abandonment applications.

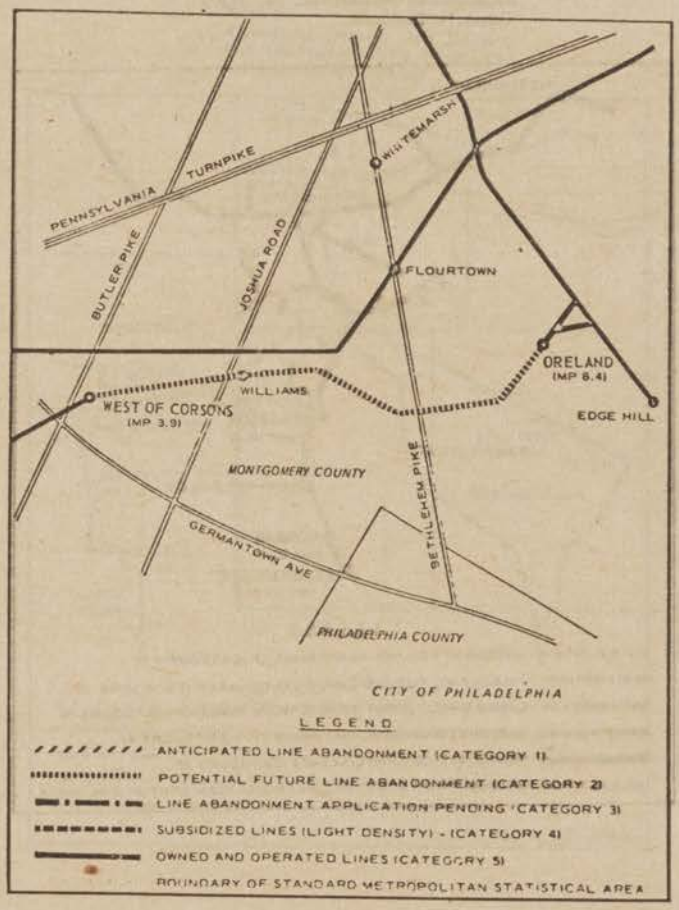
A) Designation: Plymouth Branch (15150335), Reading Division, Eastern Region. Formerly part of the Reading Company.

B) State: Located wholly in the state of Pennsylvania.

C) County: Located wholly in the county of Montgomery.

D) Mileposts: Line extends approximately from milepost 3.9 west of Corsons to milepost 8.4 at Oreland.

E) Stations: Williams, Pa., Oreland, Pa.



Erie Secondary

CATEGORY 2

Lines or portions of lines potentially subject to abandonment which the carrier has under study and believes may be the subject of future abandonment applications.

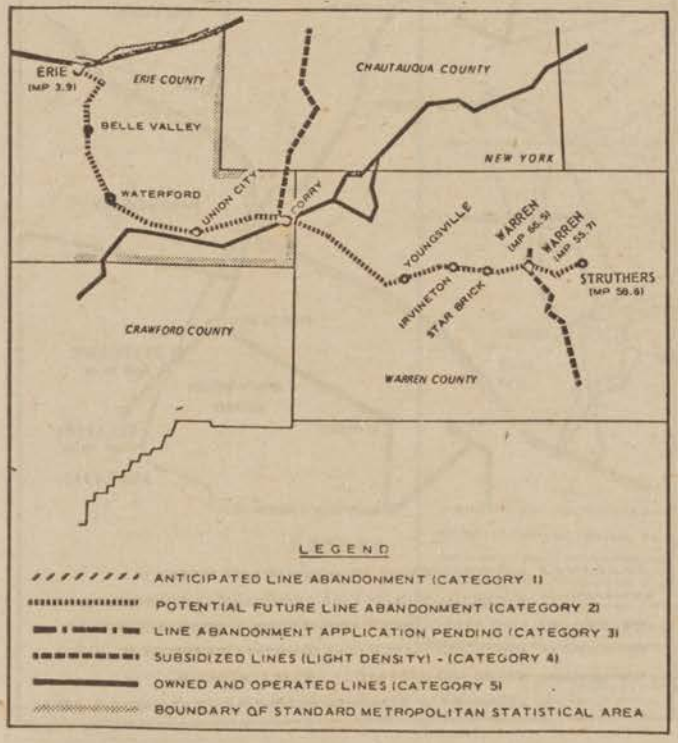
A) Designation: Erie Secondary, Corry Secondary, Emporium Secondary and Struthers Running Track (15212315A), Allegheny Division, Central Region. Formerly part of the Penn Central Transportation Company.

B) State: Located wholly in the state of Pennsylvania.

C) County: Located in the counties of Erie and Warren.

D) Mileposts: Line extends approximately from milepost 3.9 at Erie to milepost 66.5 at Warren and from milepost 55.7 at Warren to milepost 58.6 at Struthers.

E) Stations: Star Brick, Pa., Irvineton, Pa., Youngsville, Pa., Colza, Pa., Corry, Pa., Lovell, Pa., Union City, Pa., Waterford, Pa., Belle Valley, Pa., Struthers, Pa.



Bridgeville Interchange Spur

CATEGORY 2

Lines or portions of lines potentially subject to abandonment which the carrier has under study and believes may be the subject of future abandonment applications.

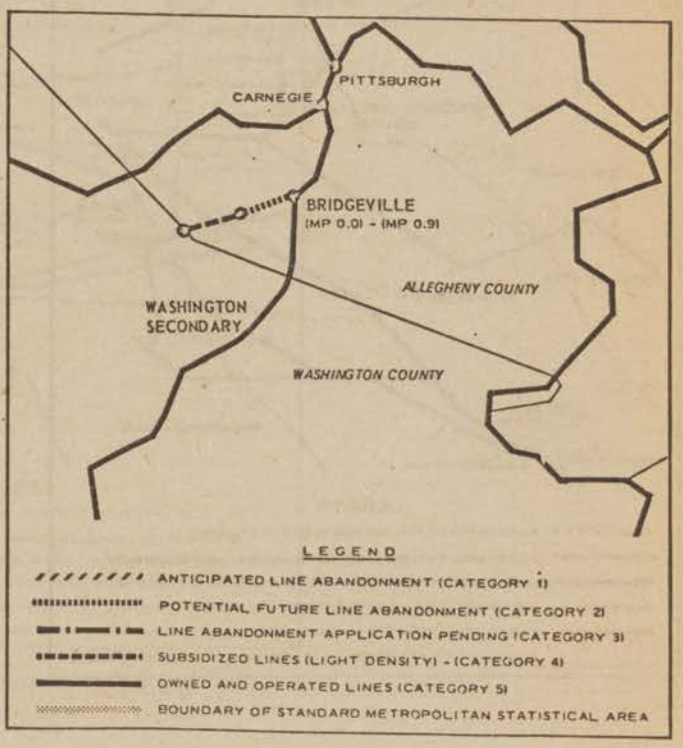
A) Designation: Bridgeville Interchange Spur (15222244A), Pittsburgh Division, Central Region. Formerly part of the Penn Central Transportation Company.

B) State: Located wholly in the state of Pennsylvania.

C) County: Located wholly in the county of Allegheny.

D) Mileposts: Line extends approximately from junction with Washington Secondary at milepost 0.0 to milepost 0.9 at Bridgeville. Note: L.D.L. at end from 0.9 to 1.4.

E) Stations: Bridgeville, Pa.



Cardington Branch

CATEGORY 2

Lines or portions of lines potentially subject to abandonment which the carrier has under study and believes may be the subject of future abandonment applications.

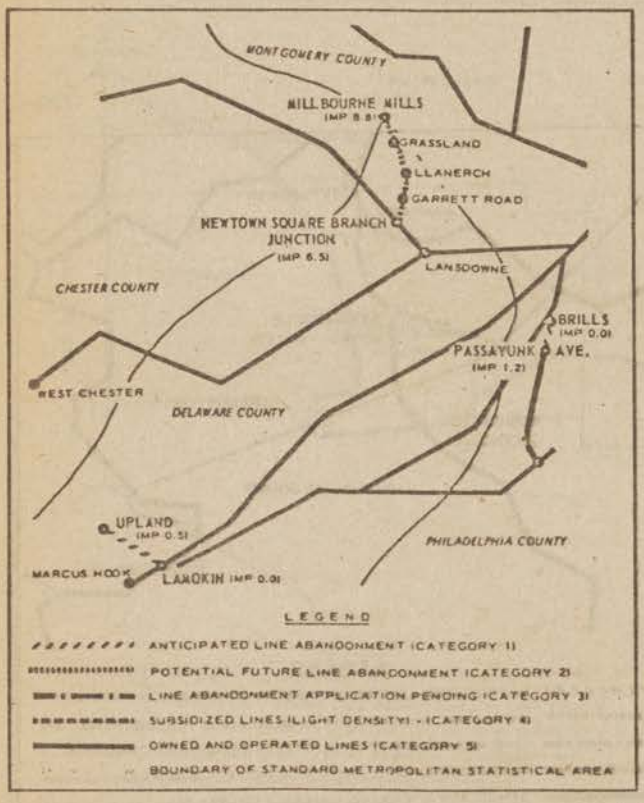
A) Designation: Cardington Branch (15111187), Philadelphia Division, Eastern Region. Formerly part of the Penn Central Transportation Company.

B) State: Located wholly in the state of Pennsylvania.

C) County: Located wholly in the county of Delaware.

D) Mileposts: Line extends approximately from milepost 6.5 at Newtown Square Branch to milepost 8.8 at Millbourne Mills.

E) Stations: Garrett Road, Pa., Llanerch, Pa., Grassland, Pa.



Old Road Branch

CATEGORY 2

Lines or portions of lines potentially subject to abandonment which the carrier has under study and believes may be the subject of future abandonment applications.

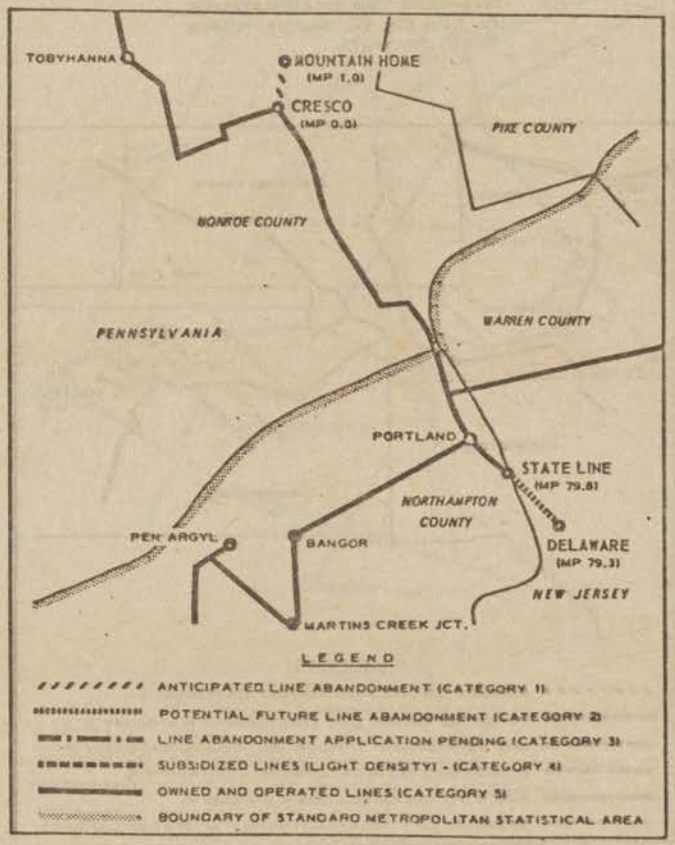
A) Designation: Old Road Branch (15626242), Hoboken Division, Atlantic Region. Formerly a part of the Erie Lackawanna Railway Company.

B) State: Located in the states of Pennsylvania and New Jersey.

C) County: Located in the county of Northampton in Pennsylvania and the county of Warren in New Jersey.

D) Mileposts: Line extends approximately from milepost 79.3 at Delaware to milepost 79.8 at the New Jersey/Pennsylvania state line.

E) Stations: None.



Niagara Falls Branch

CATEGORY 3

Lines or portions of lines for which an abandonment or discontinuance application is now pending before the Commission.

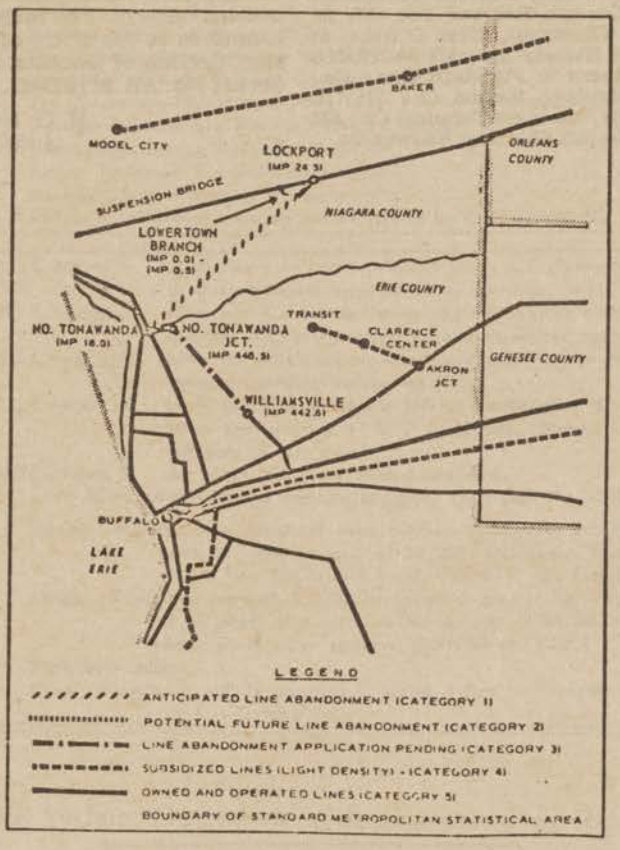
A) Designation: Niagara Falls Branch (13480615), Buffalo Division, Northeastern Region. Formerly part of the Lehigh Valley Railroad Company.

B) State: Located wholly in the state of New York.

C) County: Located wholly in the county of Erie.

D) Mileposts: Line extends approximately from milepost 442.6 at Williamsville to milepost 448.5 at North Tonawanda Junction.

E) Stations: Williamsville, N.Y., North Tonawanda, N.Y.



[FR Doc. 78-8674 Filed 4-3-78; 8:45 am]

[7035-01]

[AB 26 (SDM) [1]]

SOUTHERN RAILWAY CO.

System Diagram Map

Notice is hereby given that, pursuant to the requirements contained in Title 49 of the Code of Federal Regulations, Part 1121.23, that Southern Railway Co. and its consolidated subsidiaries, has filed with the Commission its revised color-coded system diagram map in Docket No. AB 26 (SDM). The maps reproduced here in black and white are reasonable reproductions of that revised system diagram map and the Commission on January 18, 1978, received a certificate of publication as required by said regulation which is considered the effective date on which the revised system diagram map was filed.

Color-coded copies of the map have been served on the Governor of each state in which the railroad operates and the Public Service Commission or similar agency and the State designated agency. Copies of the map may also be requested from the railroad at a nominal charge. The maps also may be examined at the office of the Commission, Section of Dockets, by requesting docket No. AB 26 (SDM).

H. G. HOMME, Jr.,
Acting Secretary.

[1] AB 26 (SDM) includes its consolidated subsidiaries: AB 27 (SDM), the Alabama Great Southern RR. Co.; AB 28 (SDM), Central of Georgia Railroad Co.; AB 29 (SDM), the Cincinnati, New Orleans & Texas Pacific Railway Co.; AB 30 (SDM), Georgia Southern & Florida Railway Co.; AB 64, Chattanooga Station Co.; AB 118 (SDM), Albany Passenger Terminal Co.; AB 125 (SDM), Norfolk Southern Railway Co.

MAP OF

Southern Railway Company & Consolidated Subsidiaries*

(AB-26, AB-27, AB-28, AB-29, AB-30, AB-64, AB-118, AB-125)

SYSTEM DIAGRAM MAP

49 C.F.R. 1121.20
December 1, 1977.

SCALE: 25 0 25 50 75 100 MILES

LEGEND

Designation of Carriers and AB Numbers:

AB-26	Southern Railway Company (SOU)
AB-27	The Alabama Great Southern Railroad Company (AGS)
AB-28	Central of Georgia Railroad Company (C of G)
AB-29	The Cincinnati, New Orleans and Texas Pacific Railway Company (CNO&TP)
AB-30	Georgia Southern and Florida Railway Company (GS&F)
AB-64	Chattanooga Station Company (CHT. S)
AB-118	Albany Passenger Terminal Company (APT)
AB-125	Norfolk Southern Railway Company (NS)

*APT is an affiliated company owned jointly by C of G and SCL RR.

Category 1: Lines likely to be the subject of an ICC abandonment or discontinuance application within three years.

Category 2: Lines which are under study and may be the subject of a future ICC abandonment or discontinuance application.

Category 3: Lines for which abandonment or discontinuance applications are pending before the ICC.

None at this time Category 4: Lines operated under rail service continuation assistance provisions of 49 USC 1a (6) (a). (None in this category at this time.)

Category 5: All other lines, owned and operated.

8 Lines (Categories 1-4) too short to designate clearly at this scale.

Standard Metropolitan Statistical Area -SMSA. (County or counties with at least one city of 50,000 inhabitants. Those shown here are within 5 air miles of a rail line.)

o Cities. (Showing those with 5,000 population or greater located within 5 air miles of a rail line but outside of an SMSA, in addition to other selected points on the line.)

——— State boundaries.

- - - - County boundaries. (Only counties in which a line in Category 1,2,3 or 4 is located are named.)

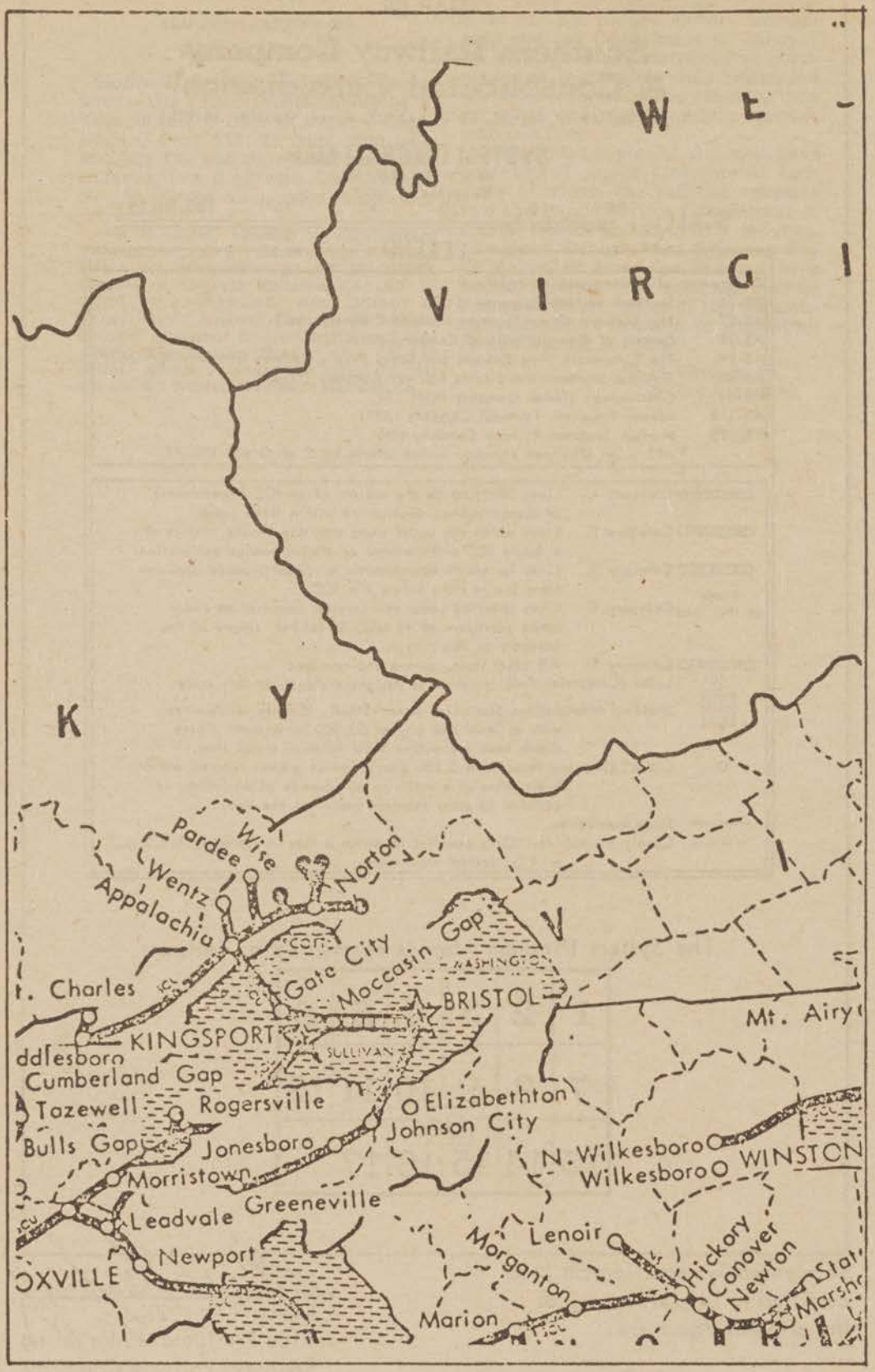
The System Diagram Map is segmented as follows:

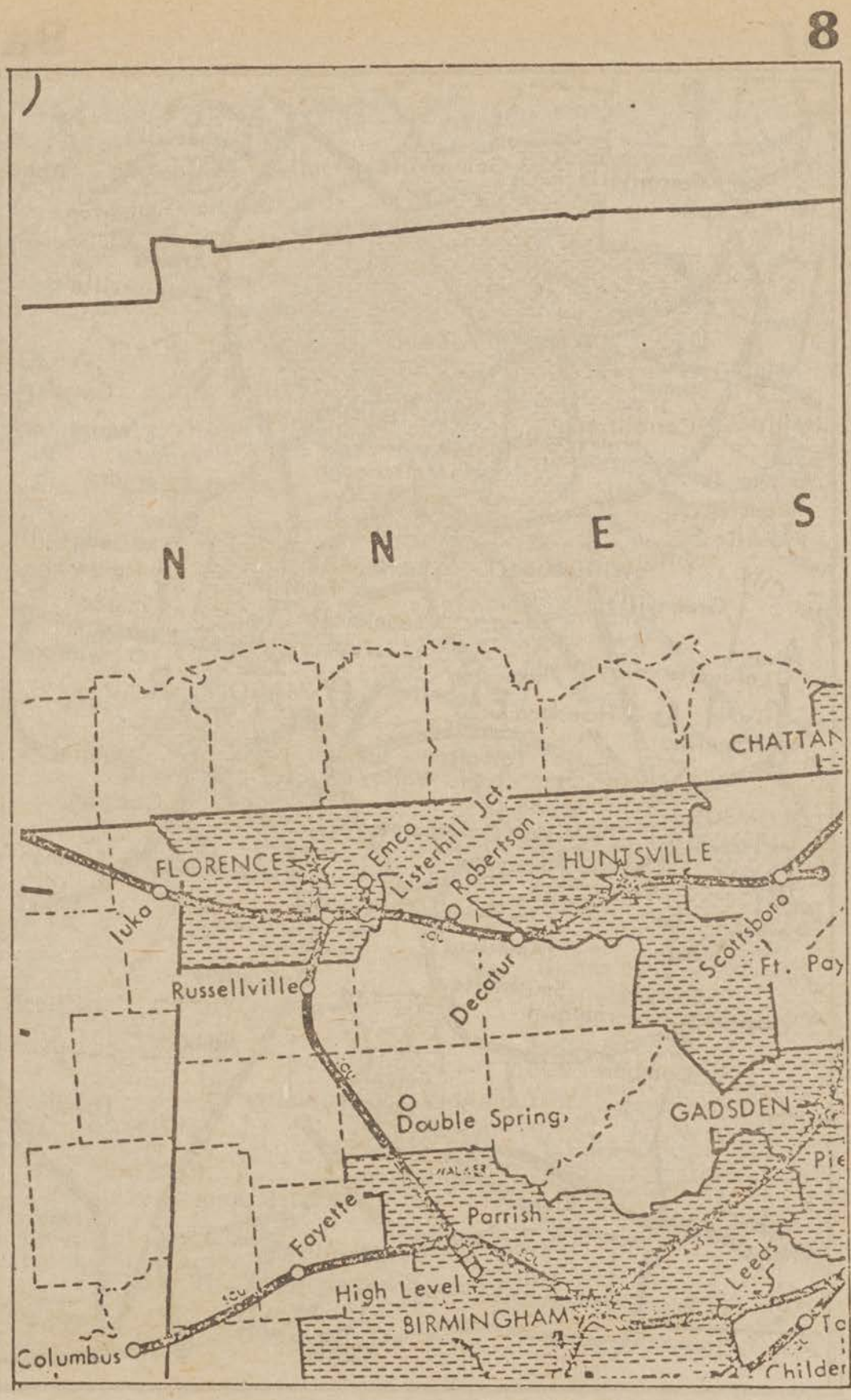
1	2	3	4	5	6
7	8	9	10	11	12
		9a			
13	14	15	16	17	

Segmented System Diagram Map certified to be a true copy of the original document.

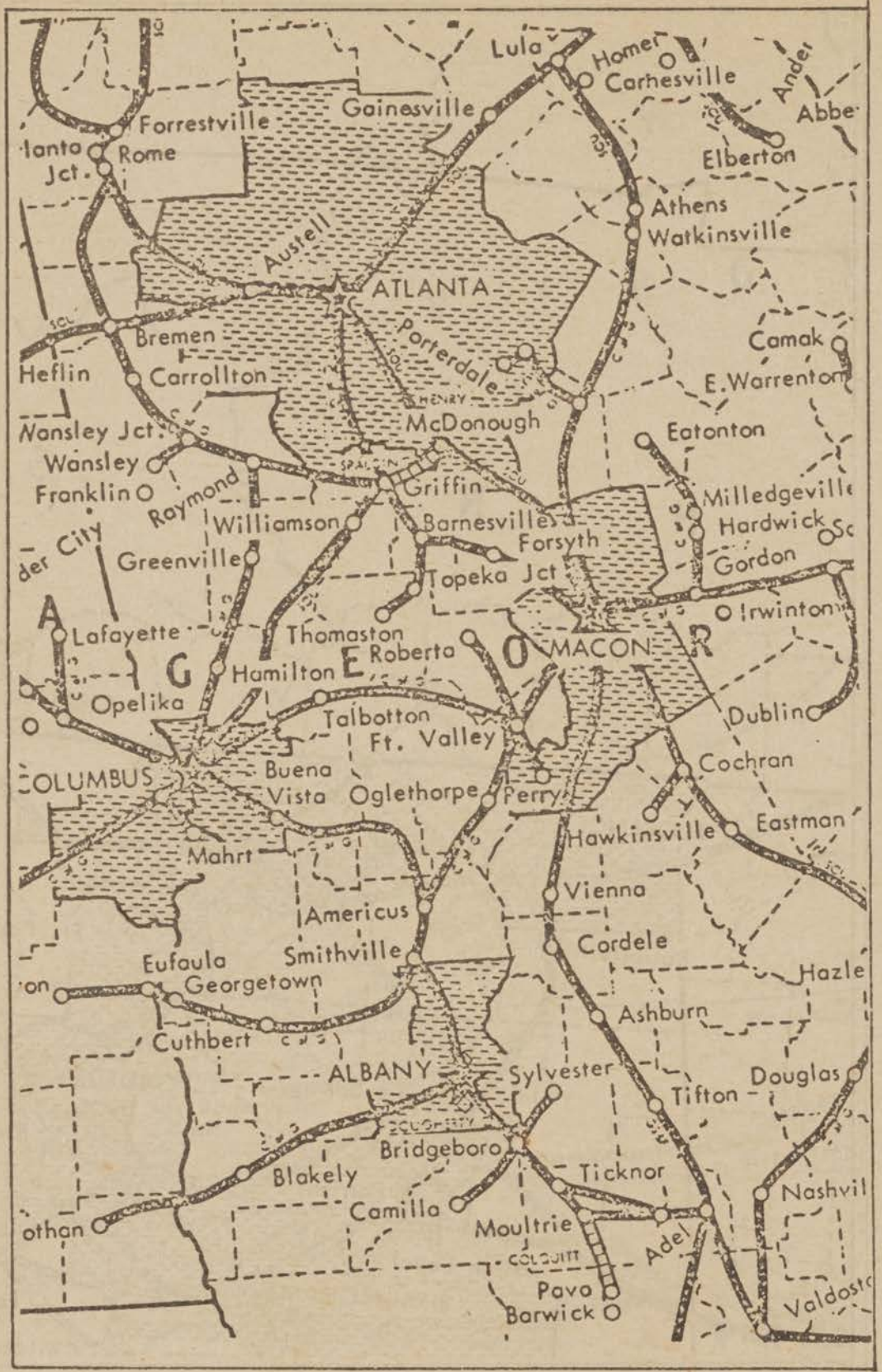
E. G. Krepting, Jr.
Vice President - Marketing
Southern Railway Company

4


W E -
V I R G I
K Y
Pardee
Wise
Norton
Wentz
Appalachia
Gate City
Moccasin Gap
BRISTOL
Mt. Airy
t. Charles
KINGSPORT
Cumberland Gap
Tazewell
Rogersville
Bulls Gap
Jonesboro
Elizabethton
Johnson City
N. Wilkesboro
Wilkesboro
WINSTON
Morristown
Greeneville
Leadvale
Newport
Lenoir
Morganton
Hickory
Conover
Newton
Marion


8
N N E S
CHATTAN
FLORENCE
Emco
Listerhill Jct.
Robertson
HUNTSVILLE
Iuka
Russellville
Decatur
Scottsboro
Ft. Pay
Double Spring
GADSDEN
Pie
Parrish
Fayette
High Level
Leeds
BIRMINGHAM
Columbus
Childer

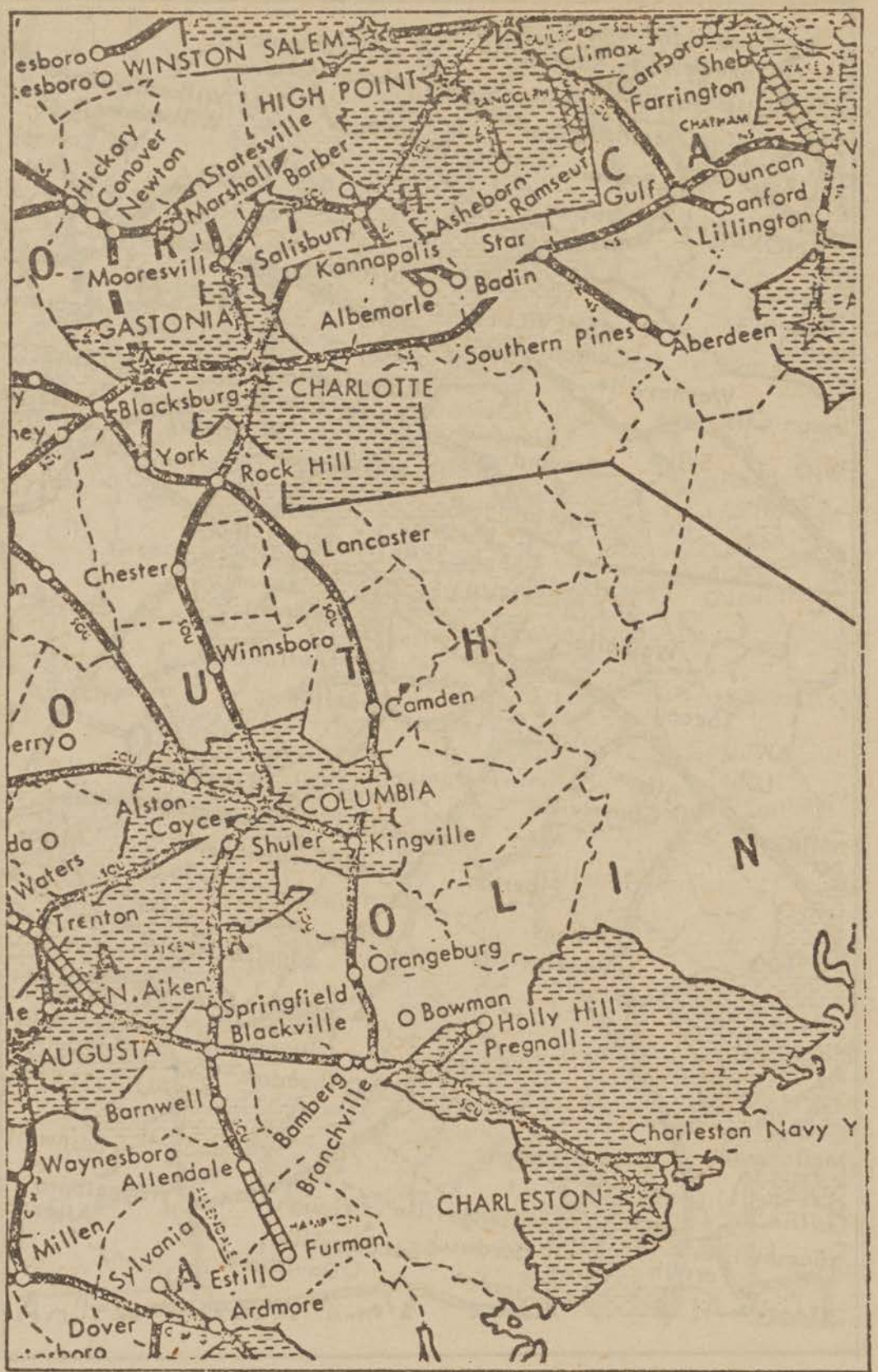
9a


Lula
Homer
Carnesville
Gainesville
Forrestville
Rome
Jct.
Elberton
Athens
Watkinsville
Austell
ATLANTA
Bremen
Heflin
Carrollton
Porterdale
Camak
E.Warrenton
McDonough
Eatonton
Griffin
Franklin
Raymond
Williamson
Barnesville
Forsyth
Milledgeville
Hardwick
Greenville
Topeka Jct
Gordon
Irwinton
Lafayette
Thomaston
Roberta
MACON
Hamilton
Opelika
Talbotton
Ft. Valley
Dublin
Buena
Vista
Oglethorpe
Perry
Cochran
COLUMBUS
Hawkinsville
Eastman
Mahrt
Vienna
Americus
Cordele
Smithville
Eufaula
Georgetown
Hazle
Ashburn
Cuthbert
ALBANY
Sylvester
Douglas
Tifton
Bridgeboro
Blakely
Ticknor
Camilla
Moultrie
Adel
Pavo
Barwick
Valdosta

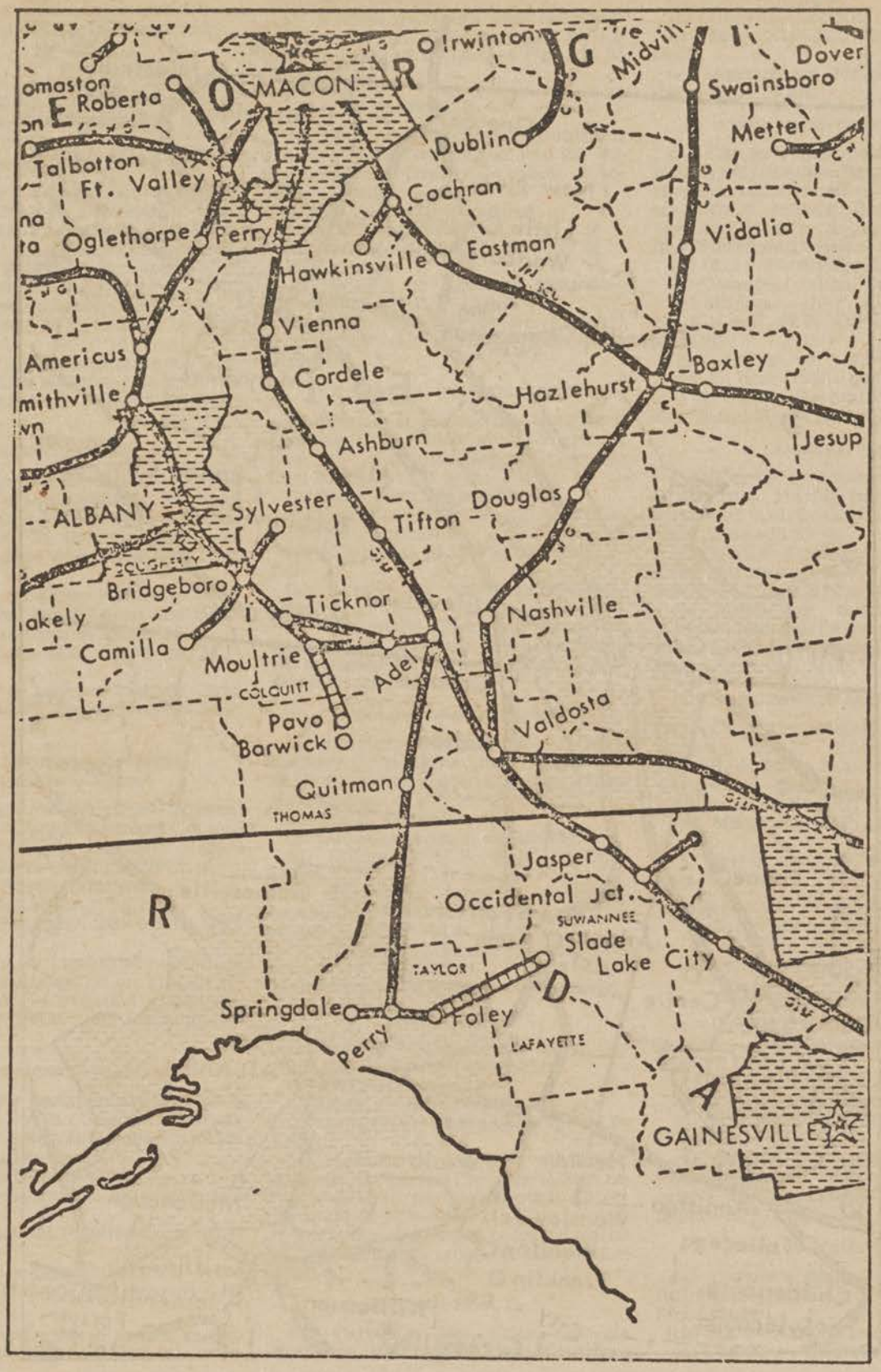
10


Cumberland Gap
Tazewell
Rogersville
Elizabethton
Johnson City
Bulls Gap
Jonesboro
N. Wilkesboro
Wilkesboro
Morristown
Greeneville
Leadvale
Lenoir
Morganton
Hickory
Conover
Newton
Newport
KNOXVILLE
Marion
ASHEVILLE
Canton
Waynesville
Rutherfordton
Forest City
W. Shelby
GASTON
Sylva
Brevard
TRANSYLVANIA
Gaffney
Rosman
Hendersonville
SPARTANBURG
GREENVILLE
Piedmont
Union
Chester
Walhalla
Belton
ANDERSON
Toccoa
Seneca
Anderson
Newberry
Lula
Homer
Carnesville
ABBEVILLE
Abbeville
Greenwood
Saluda
Alston
Elberton
Athens
Watkinsville
EDGEFIELD
Edgefield
Waters
Trenton
Warrenville
N. Aiken
Camak
Thomson
AUGUSTA
E. Warrenton
Barnwell
McDonough
Eatonton
Waynesboro
Griffin
Milledgeville
Gough
Hardwick
Sandersville
Barnesville
Forsyth
Davisboro
Gordon
Millen
Sylvania

11


WINSTON SALEM
HIGH POINT
Climax
Carrboro
Farrington
Hickory
Conover
Newton
Statesville
Marshall
Barber
Asheboro
Ramseur
Gulf
Duncan
Sanford
Lillington
Mooresville
Salisbury
Kannapolis
Star
Badin
Albemarle
GASTONIA
Southern Pines
Aberdeen
CHARLOTTE
Blacksburg
York
Rock Hill
Lancaster
Chester
Winnsboro
Camden
Alston
Cayce
COLUMBIA
Shuler
Kingville
Waters
Trenton
Orangeburg
N. Aiken
Springfield
Blackville
Bowman
Holly Hill
Pregnall
AUGUSTA
Barnwell
Bamberg
Branchville
Charleston Navy Y
Waynesboro
Allendale
CHARLESTON
Millen
Sylvania
Furman
Estill
Ardmore
Dover

16


Irwinton
Midville
Dover
Swainsboro
Metter
MACON
Dublin
Roberta
Talbotton
Ft. Valley
Cochran
Vidalia
Oglethorpe
Perry
Eastman
Hawkinsville
Vienna
Americus
Cordele
Baxley
Hazlehurst
Ashburn
Jesup
ALBANY
Sylvester
Tifton
Douglas
Bridgeboro
Ticknor
Nashville
Camilla
Moultrie
COLQUITT
Adel
Pavo
Barwick
Valdosta
Quitman
THOMAS
Jasper
Occidental Jct.
SUWANNEE
Slade
Lake City
TAYLOR
Springdale
Foley
LAFAYETTE
Perry
GAINESVILLE

9


Jellico
Fonde
Middlesboro
Cumberland
Oneida
Clairfield
Tazewell
Bulls Gap
New River
Rutledge
Little Creek
Wartburg
Fork Mtn
Clinton
KNOXVILLE
Harriman
Crossville
Maryville
S
S
E
Loudon
Waynesv
Athens
Bryson City
Robbinsville
Sylva
Ooltewah
Cleveland
Murphy
CHATTANOOGA
Cohutta
Dalton
Toccoa
Lula
Ft. Payne
Gainesville
Forrestville
Atlanta
Jct.
Rome
Centre
Austell
ATLANTA
Piedmont
Bremen
Heflin
Carrollton
Porterdale
Anniston
Wansley Jct.
McDonough
Talladega
Wansley
Griffin
Franklin
Raymond
Childersburg
Williamson
Barnesville
Sylacauga
City
Greenville

SOUTHERN RAILWAY CO. AND CONSOLIDATED SUBSIDIARIES

LINE DESCRIPTIONS TO ACCOMPANY SYSTEM DIAGRAM MAP—(DECEMBER 1, 1977)*

Category No. 1.—Lines likely to be the subject of an ICC abandonment or discontinuance application within three (3) years.

ALLENDALE-FURMAN, S.C.

(a) Carrier's designation—Southern Railway—Carolina Division and Southern Railway Co.'s Allendale-Furman line on former Columbia-Savannah line, Piedmont Division.
(b) State—South Carolina.
(c) Counties—Allendale, Hampton.
(d) Mileposts—M.P. C-186.8 to M.P. C-211.0.
(e) Agency or terminal station—none on line; traffic on line received and forwarded through Blackville—M.P. C-161.2.

BRISTOL-MOCCASIN GAP, VA.*

(a) Carrier's designation—Virginia and Southwestern Railway Co. and Southern Railway Co.'s Bristol-Moccasin Gap line on Bristol-St. Charles Line, Appalachia and Tennessee Divisions.
(b) States—Virginia, Tennessee.
(c) Counties—Washington and Scott in Virginia; Sullivan in Tennessee.
(d) Mileposts—M.P. 72.5T to M.P. 39.9T.
(e) Agency or terminal station—Bristol—M.P. 69.9T; Moccasin Gap—M.P. 39.9T.

DUNCAN-KING SCOTT SIDING (FARRINGTON), N.C.*

(a) Carrier's designation—Durham and South Carolina Railroad Co. and Norfolk Southern Railway Co.'s Durham Branch, Carolina Division.
(b) State—North Carolina.
(c) Counties—Wake, Chatham.
(d) Mileposts—M.P. DD-0.0 to M.P. DD-26.5.
(e) Agency or terminal stations—none on branch; traffic on branch received and forwarded through Varina—M.P. VF-0.0 and Durham—M-P. DD-40.3

FOLEY JUNCTION—SLADE, FLA.*

(a) Carrier's designation—Live Oak, Perry and South Georgia Railway Co.'s former Foley Junction—Live Oak Line, Coastal Division.
(b) State—Florida.
(c) Counties—Taylor, Lafayette, and Suwannee.
(d) Milepost—M.P. MB-40.0 to M.P. MB-1.2.
(e) Agency or terminal station—none on line; traffic on line formerly received and forwarded through Live Oak—M.P. MB—0.0 and Foley Junction—M.P. MB-40.0.
(f) Comment—Operations terminated January 31, 1977, pursuant to authority granted in Docket No. AB 26 (Sub-No. 8).

GREENWOOD, S.C.

(a) Carrier's designation—Southern Railway Co.'s Greenwood line on Columbia-Belton-Greenville line, Piedmont Division.
(b) State—South Carolina.
(c) County—Greenwood.
(d) Mileposts—M.P. V-80.1 to M.P. V-89.1.
(e) Agency or terminal stations—Greenwood—M.P. V-82.4.
(f) Comment—Line to be relocated in rail-highway crossing elimination project.

GREENWOOD—PIEDMONT, S.C.*

(a) Carrier's designation—Southern Railway Co.'s Greenwood—Piedmont line on Columbia-Belton-Greenville line, Piedmont Division.
(b) State—South Carolina.
(c) Counties—Greenwood, Abbeville, Anderson, Greenville.
(d) Mileposts—M.P. V-85 to M.P. V-132.
(e) Agency or terminal station—Greenwood—M.P. V-82.4.
(f) Comment—Operating coordination project; service will be continued via trackage rights over parallel Seaborad Coast Line track.

MCDONOUGH—GRIFFIN, GA.*

(a) Carrier's designation—Southern Railway Co.'s McDonough-Griffin line on McDonough-Columbus line, Georgia Division.
(b) State—Georgia.
(c) Counties—Henry, Spaulding.
(d) Mileposts—M.P. 3.0M to M.P. 15.0M.
(e) Agency or terminal stations—McDonough—M.P. 181.0H; Griffin (Spaulding Co.)—M.P. 18.5M.
(f) Comment—Service to be preserved to industries on line near McDonough and Griffin, respectively.

METARIE, LA.

(a) Carrier's designation—New Orleans Terminal Co.'s long siding.
(b) State—Louisiana.
(c) County—Jefferson Parish.
(d) Mileposts—M.P. 0.85A to M.P. 1.80A.
(e) Agency or terminal stations—none on siding; traffic over siding received and forwarded through Oliver Yard—M.P. NO—195.6.
(f) Comment—Siding to be relocated in rail-highway crossing elimination project.

MOULTRIE-PAVO, GA.*

(a) Carrier's designation—Georgia Northern Railway Co. and Southern Railway Co.'s Moultrie—Pavo line, Coastal Division.
(b) State—Georgia.
(c) Counties—Colquitt, Thomas.
(d) Mileposts—M.P. 28.8B to M.P. 13.0B.
(e) Agency or terminal station—Pavo—M.P. 13.3B.

NORTH AIKEN-WATERS, S.C.*

(a) Carrier's designation—Southern Railway Co.'s Aiken Branch, Piedmont Division and Central of Georgia Railroad Co.'s former Edgefield-Waters line on former Augusta-Greenwood line, Piedmont Division.
(b) State—South Carolina.
(c) Counties—Aiken, Edgefield.
(d) Mileposts—M.P. AB-18.5 to M.P. AB-0.0 and M.P. GF-276.5 to M.P. GF-280.3.
(e) Agency or terminal station—None on line; traffic over line received and forwarded through Langley—M.P. SA-66 and North Aiken—M.P. AB-19.

PALATKA, FLA.

(a) Carrier's designation—Georgia Southern & Florida Railway Co.'s Palatka stub end, Coastal Division.
(b) State—Florida.
(c) County—Putnam.
(d) Mileposts—M.P. 285-B minus 800' to M.P. 285.B plus 1600'.
(e) Agency or terminal station—None on line; traffic over line would be received and forwarded through Palatka—M.P. GA 285.0.

PARRISH-HIGH LEVEL, ALA.*

(a) Carrier's designation—Southern Railway Co.'s Ensley Southern Branch, Alabama Division.
(b) State—Alabama.
(c) County—Walker.
(d) Mileposts—M.P. 1.6ES to M.P. 6.4 ES.
(e) Agency or terminal station—Parrish—M.P. 839.5.

Category No. 2—Lines which are under study and maybe the subject of a future ICC abandonment or discontinuance application.

CALVERTON-WARRENTON, VA.

(a) Carrier's designation—Southern Railway Co.'s Warrenton Branch, Eastern Division.
(b) State—Virginia.
(c) County—Fauquier.
(d) Mileposts—M.P. CW-0.0 to M.P. CW-8.9.
(e) Agency or terminal stations—None on Branch; traffic on Branch received and forwarded through Culpeper—M.P. 67.4.

CLIMAX-RAMSEUR, N.C.

(a) Carrier's designation—Southern Railway Co.'s Ramseur Branch, Carolina Division.
(b) State—North Carolina.
(c) Counties—Guilford, Randolph.

* Line segments affected by this amendment are marked with an asterisk (*).

(d) Mileposts—M.P. CR-0.0 to M.P. CR-18.7.
(e) Agency or terminal stations—None on Branch; traffic on Branch received and forwarded through Liberty—M.P. CR-97.2.

KING SCOTT SIDING (FARRINGTON)—SHEB, N.C.

(a) Carrier's designation—Durham and South Carolina Railway Co. and Norfolk Southern Railway Co.'s Durham Branch, Carolina Division.
(b) State—North Carolina.
(c) Counties—Wake, Durham.
(d) Mileposts—M.P. DD-26.5 to M.P. DD-36.0.
(e) Agency or terminal stations—None on Branch; traffic on Branch received and forwarded through Varina—M.P. VF-0.0 and Durham—M.P. DD-40.3.

ALBANY PASSENGER TERMINAL CO. (DOCKET NO. AB-118)

(a) Carrier's designation—Albany Passenger Terminal Co's entire line.
(b) State—Georgia.
(c) County—Dougherty.
(d) Mileposts—None—All in yard.
(e) Agency or terminal station—Albany Passenger Terminal Co., station—M.P. J-297.1.

Category No. 3—Lines for which abandonment or discontinuance applications are pending before the ICC.

BREVARD-ROSMAN, N.C. (DOCKET NO. AB-26 (SUB. NO. 11))*

(a) Carrier's designation—Transylvania Railroad Co. and Southern Railway Co's Rosman Branch, Carolina Division.
(b) State—North Carolina.
(c) County—Transylvania.
(d) Mileposts—M.P. TR-21.8 to M.P. TR-32.33.
(e) Agency or terminal stations—None on Branch; traffic on Branch received and forwarded through Brevard—M.P. TR-21.6.

[FR Doc. 78-8673 Filed 4-3-78; 8:45 am]

[7035-01]

[AB 103 (SDM)*]

KANSAS CITY SOUTHERN LINES

System Diagram Map

Notice is hereby given that pursuant to the requirements contained in Title 49 of the Code of Federal Regulations, Part 1121.22, that the Kansas City Southern Lines, has filed with the Commission its color-coded system diagram map in docket No. AB 103 (SDM). The maps reproduced here in black and white are reasonable reproductions of that system diagram map and the Commission on March 1, 1978, received a certificate of publication as required by said regulation which is considered the effective date on which the system diagram map was filed.

Color-coded copies of the map have been served on the Governor of each State in which the railroad operates and the Public Service Commission or similar agency and the State designated agency. Copies of the map may also be requested from the railroad at a nominal charge. The maps also may be examined at the office of the Commission, Section of Dockets, by requesting docket No. AB 103 (SDM).

H. G. Homme, Jr.,
Acting Secretary.

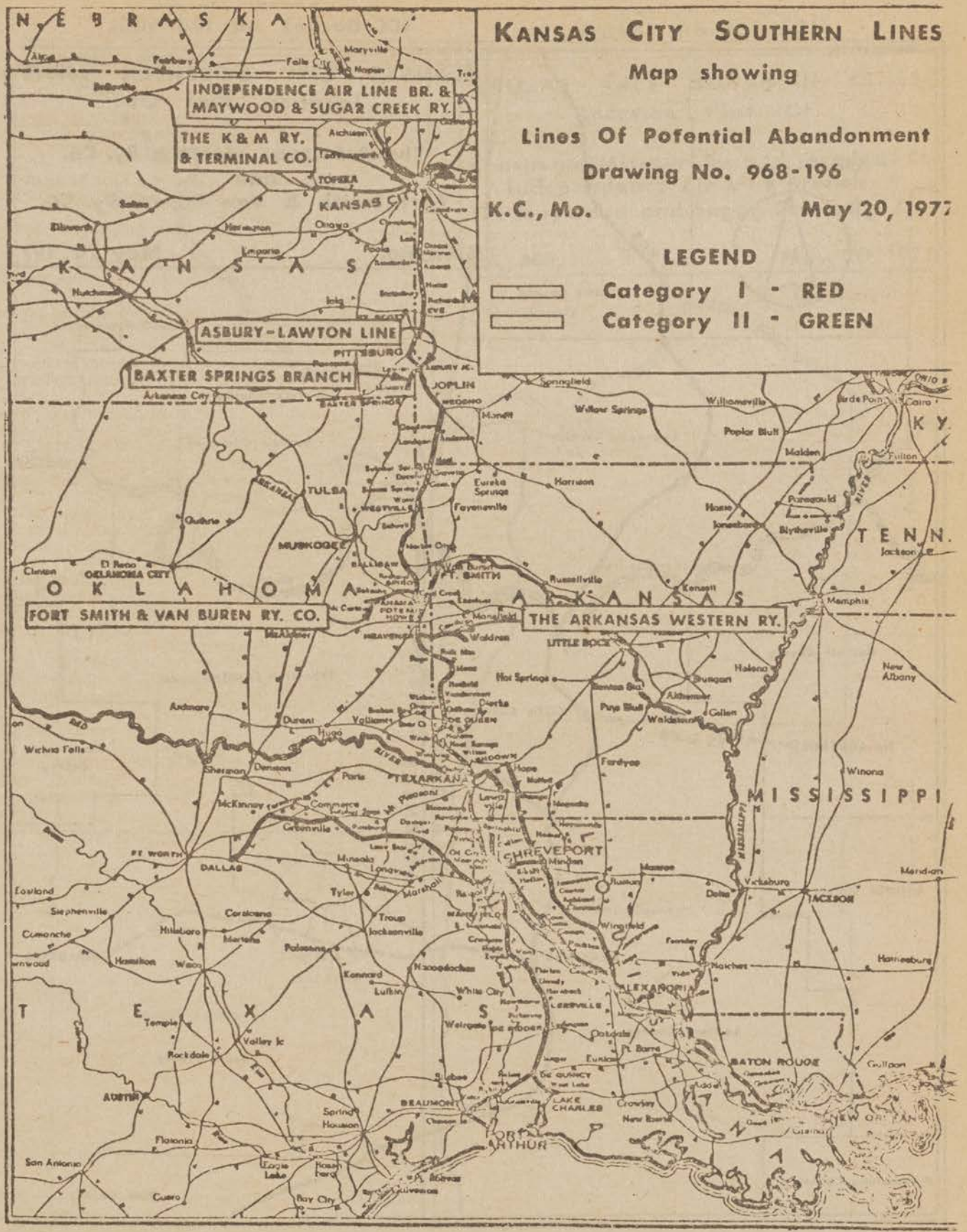
*AB 103 (SDM) includes all Kansas City Southern Lines subsidiaries: The Kansas City Southern Railway Co., Louisiana & Arkansas Railway Co., The Arkansas Western Railway Co., Fort Smith & Van Buren Railway Co. and The Kansas & Missouri Railway & Terminal Co.

KANSAS CITY SOUTHERN LINES

DESCRIPTION OF LINES TO ACCOMPANY THE SYSTEM DIAGRAM MAP

Category (1)

1. Independence Air Line Branch:
(a) Located wholly in Jackson County, Mo.
(b) Mile Post 5E+1894.7' to MP 9E+1961.5'.
(c) No agency or terminal stations.
2. Maywood and Sugar Creek Railway Co.:
(a) Located wholly within Jackson County, Mo.
(b) M.P. 0 to M.P. 1+2818.4'.
(c) No agency or terminal stations.
3. Kansas and Missouri Railway & Terminal Co.:
(a) Located wholly within Wyandotte County, Kans.
(b) MP 3+3460' to MP 5+3149.2'.
(c) No agency or terminal stations.
4. Asbury-Lawton Line and Baxter Springs Branch:
(a) Located partly in Jasper County, Mo., and Cherokee County, Kans.
(b) MP 138L+1337.3' to MP 147L+3981.4'.
(c) No agency or terminal stations.
5. Fort Smith & Van Buren Railway Co.:
(a) Located in LeFlore and McCurtain Counties in Okla.
(b) MP 20 to MP 40+3745.6'.
(c) Coal Creek, Bokoshe, McCurtain.
6. The Arkansas Western Railway Co.:
(a) Located partly in LeFlore County, Okla., and partly in Scott County, Ark.
(b) MP 0 to MP 33+1902.3'.
(c) Heavener, Coaldale, Bates, Couthron, Oliver, Hon, Waldron.


KANSAS CITY SOUTHERN LINES
Map showing
Lines Of Potential Abandonment
Drawing No. 968-196
K.C., Mo.
May 20, 1977
LEGEND
Category I - RED
Category II - GREEN
INDEPENDENCE AIR LINE BR. & MAYWOOD & SUGAR CREEK RY.
THE K & M RY. & TERMINAL CO.
ASBURY-LAWTON LINE
BAXTER SPRINGS BRANCH
FORT SMITH & VAN BUREN RY. CO.
THE ARKANSAS WESTERN RY.
NEBRASKA
KANSAS
OKLAHOMA
ARKANSAS
TEXAS
MISSISSIPPI
TENN.
KY.
KANSAS CITY
TOPEKA
JOPLIN
TULSA
MUSKOGEE
FT. SMITH
OKLAHOMA CITY
LITTLE ROCK
TEXARKANA
SHREVEPORT
DALLAS
VICKSBURG
JACKSON
MERIDIAN
BATON ROUGE
NEW ORLEANS
PORT ARTHUR
LAKE CHARLES
AUSTIN
SAN ANTONIO
MEMPHIS

ICC Docket AB-103-SDM

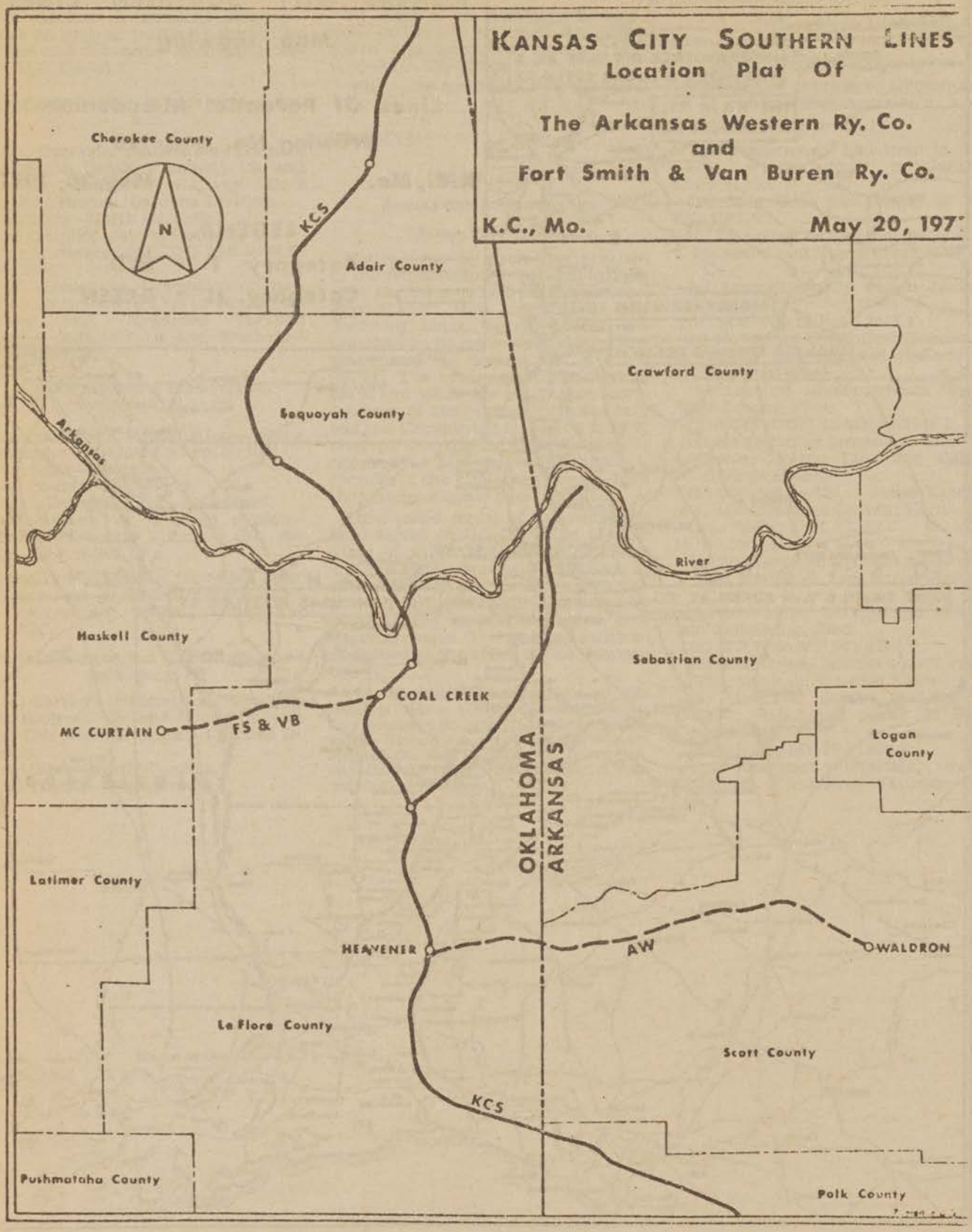
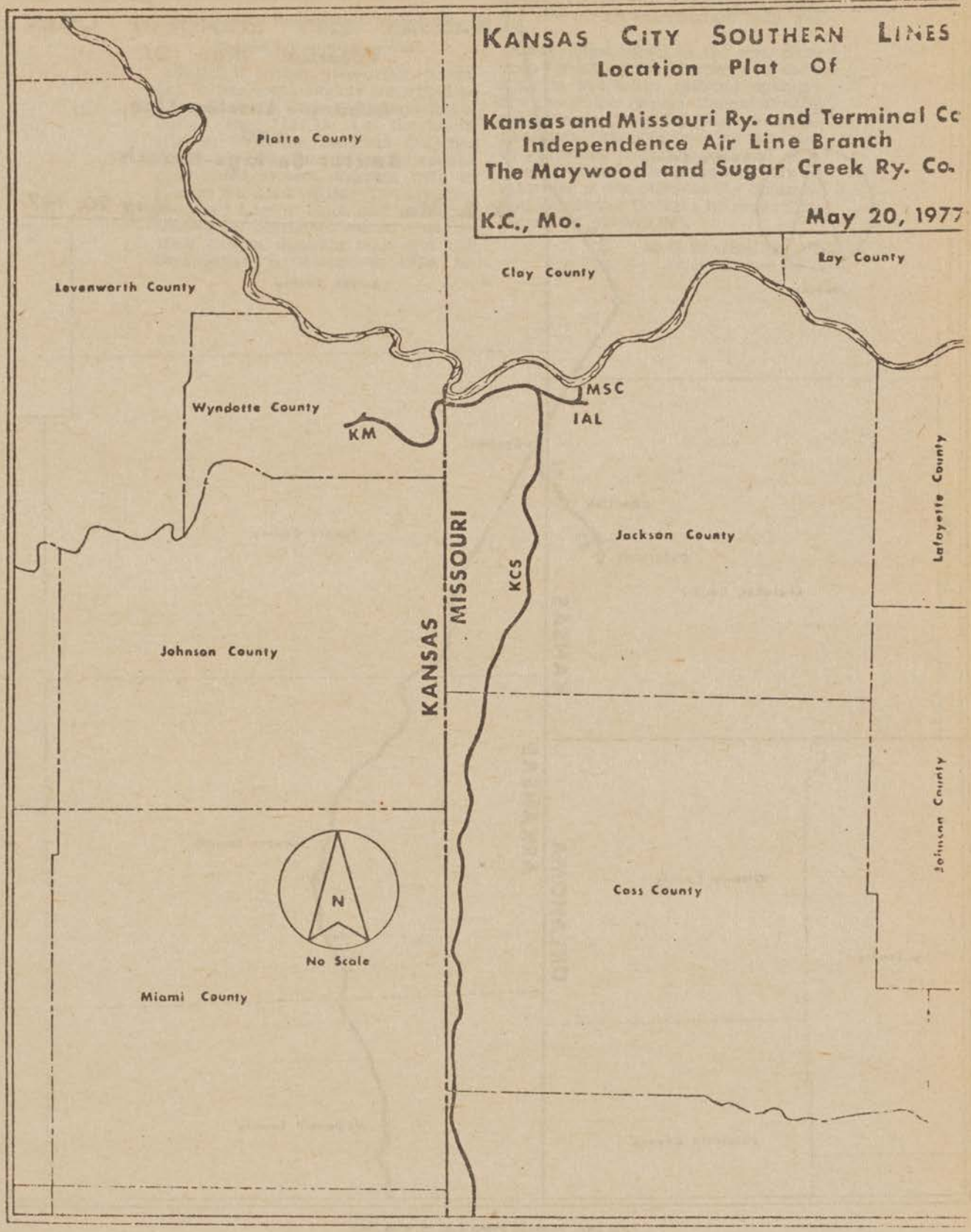
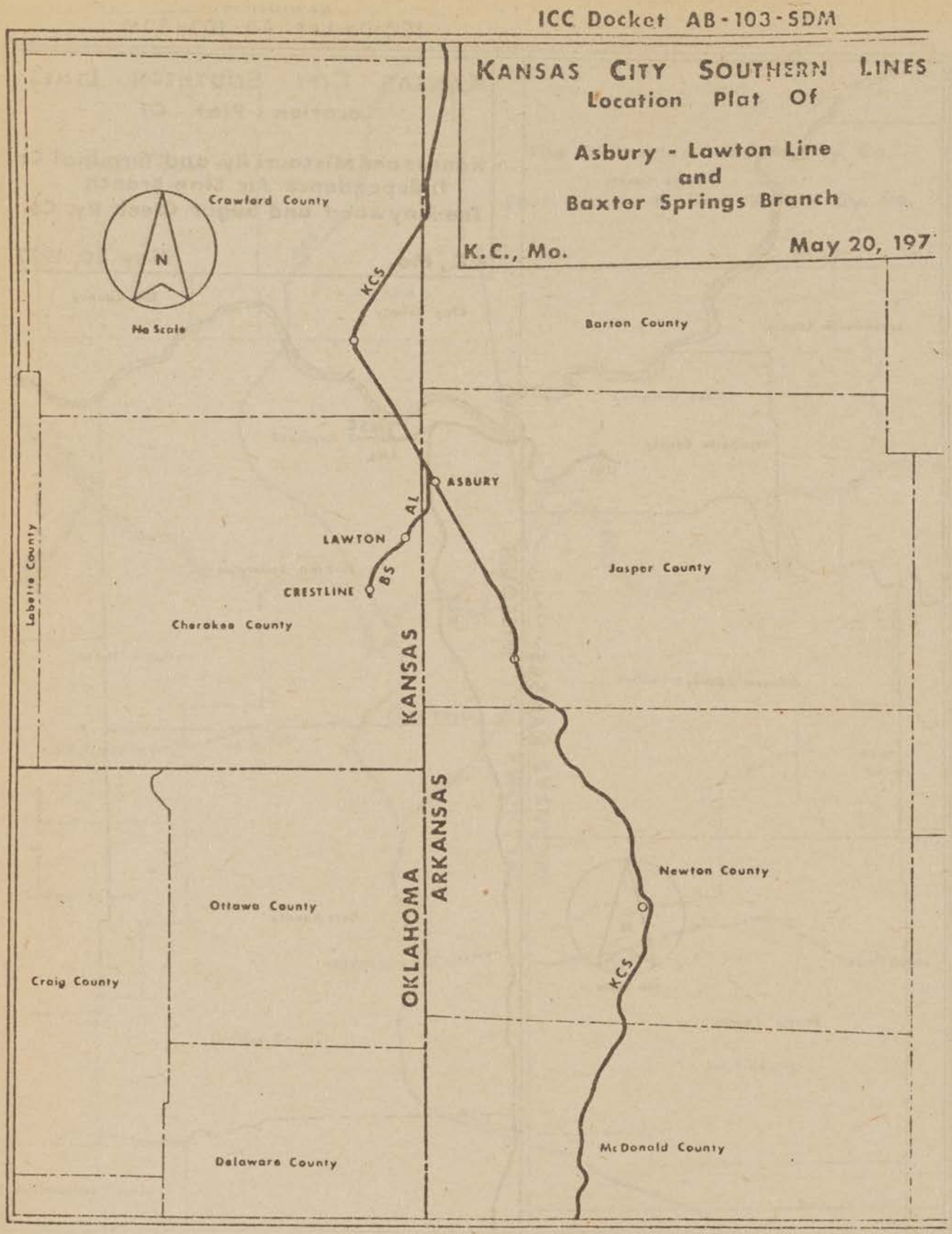


EXHIBIT NO. ___
ICC Docket AB-103-SDM





[FR Doc. 78-8672 Filed 4-3-78; 8:45 am]

[7035-01]

[AB 2 (SDM)]

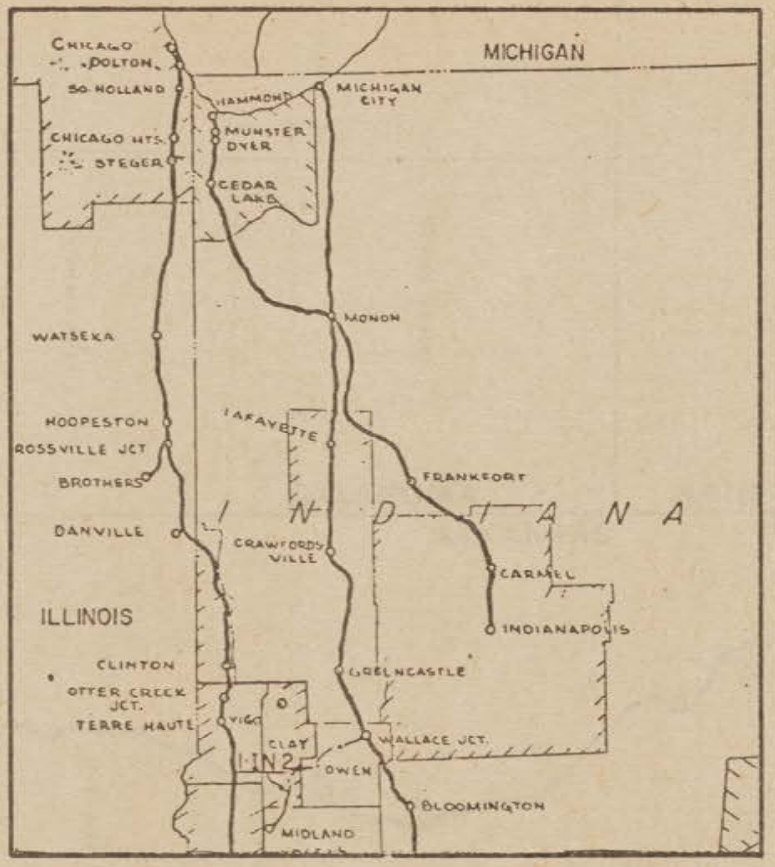
LOUISVILLE & NASHVILLE RAILROAD CO.

Revised System Diagram Map

Notice is hereby given that, pursuant to the requirements contained in Title 49 of the Code of Federal Regulations, Part 1121.23, that the Louisville & Nashville Railroad Co., has filed with the Commission its revised color-coded system diagram map in Docket No. AB 2 (SDM). The maps reproduced here in black and white are reasonable reproductions of that revised system diagram map and the Commission on March 6, 1978, received a certificate of publication as required by said regulation which is considered the effective date on which the revised system diagram map was filed.

Color-coded copies of the map have been served on the Governor of each state in which the railroad operates and the Public Service Commission or similar agency and the State-designated agency. Copies of the map may also be requested from the railroad at a nominal charge. The maps also may be examined at the office of the Commission, Section of Dockets, by requesting docket No. AB 2(SDM).

H. G. Homme, Jr.,
Acting Secretary.

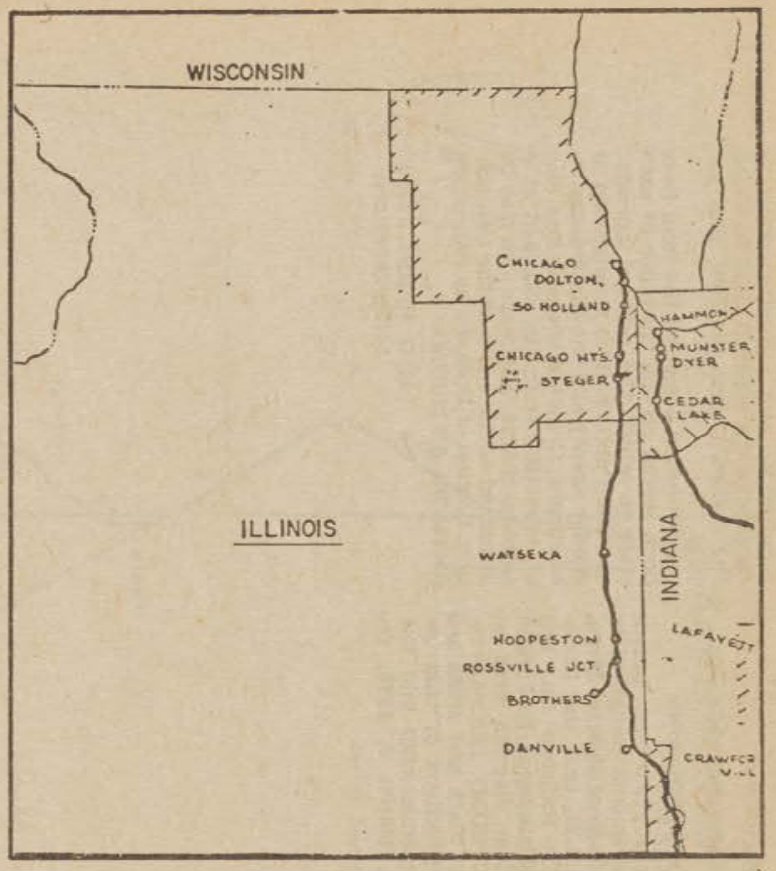


LOUISVILLE & NASHVILLE RAILROAD CO.
I.C.C. DOCKET AB-2
SYSTEM DIAGRAM MAP
NORTHERN INDIANA

LEGEND

CATEGORY 1 ——·——·——
CATEGORY 5 ————

Population over 5,000
Std. Metrop. Stat. Areas
County Lines
State Lines

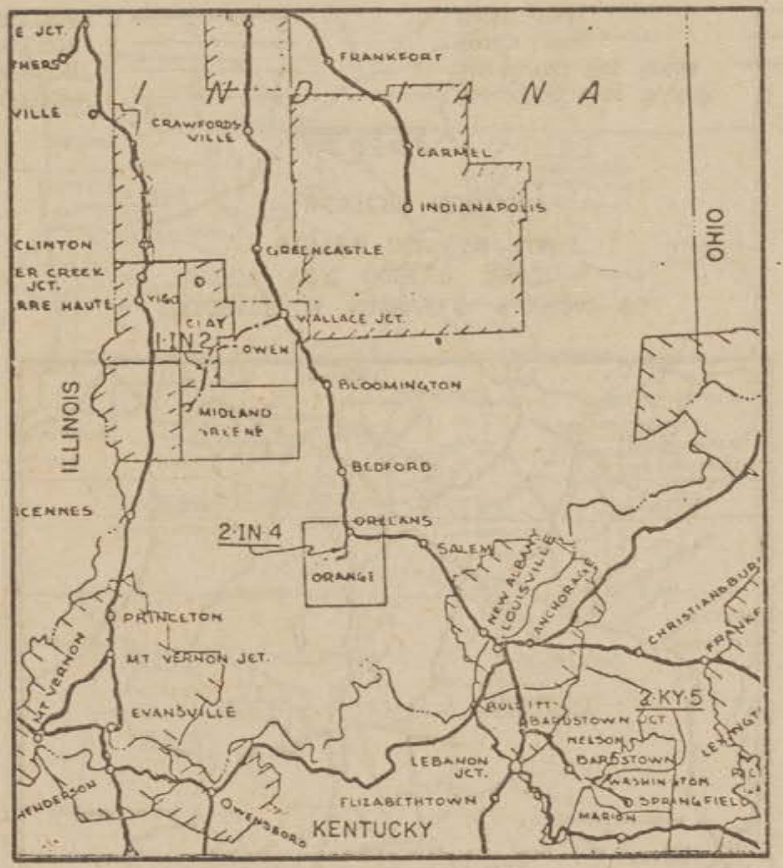


LOUISVILLE & NASHVILLE RAILROAD CO.
I.C.C. DOCKET AB-2
SYSTEM DIAGRAM MAP
ILLINOIS

LEGEND

CATEGORY 5 ————

Population over 5,000
Std. Metrop. Stat. Areas
County Lines
State Lines

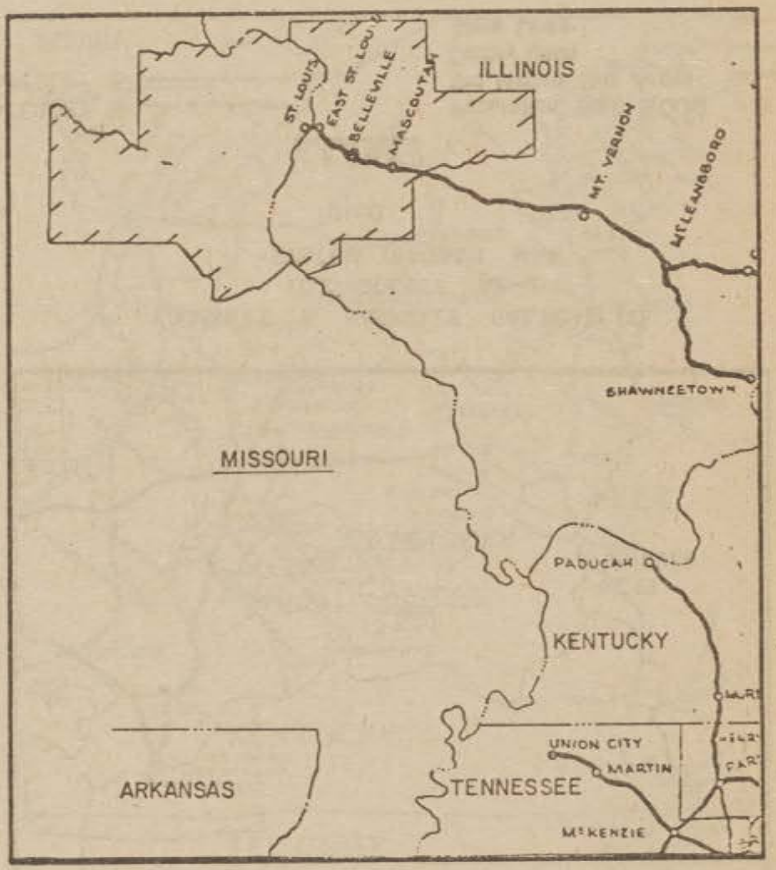


LOUISVILLE & NASHVILLE RAILROAD CO.
I.C.C. DOCKET AB-2
SYSTEM DIAGRAM MAP
SOUTHERN INDIANA

LEGEND

CATEGORY 1 —·—·—
CATEGORY 2 — — — —
CATEGORY 5 ————

Population over 5,000
Std. Metrop. Stat. Areas
County Lines
State Lines

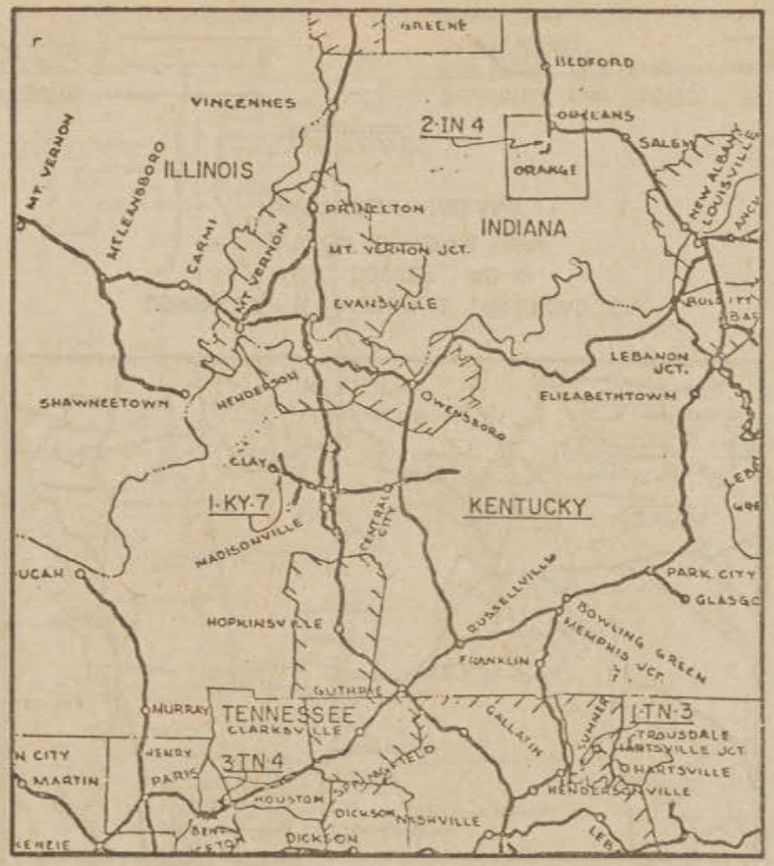


LOUISVILLE & NASHVILLE RAILROAD CO.
I.C.C. DOCKET AB-2
SYSTEM DIAGRAM MAP
MISSOURI

LEGEND

CATEGORY 5 ————

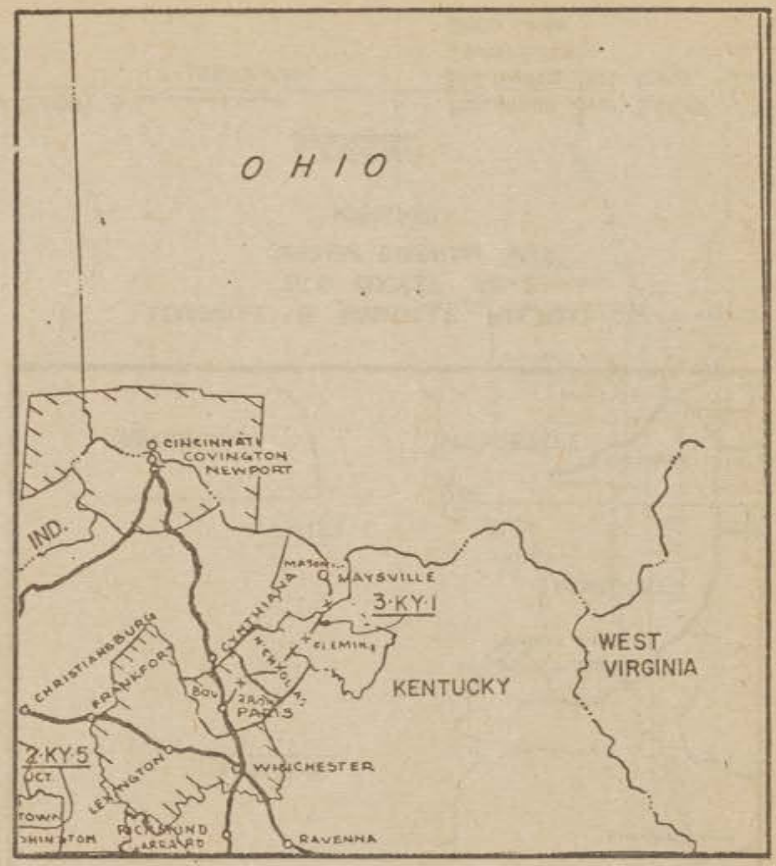
Population over 5,000
Std. Metrop. Stat. Areas
County Lines
State Lines



LOUISVILLE & NASHVILLE RAILROAD CO.
I.C.C. DOCKET AB-2
SYSTEM DIAGRAM MAP
WESTERN KENTUCKY

LEGEND

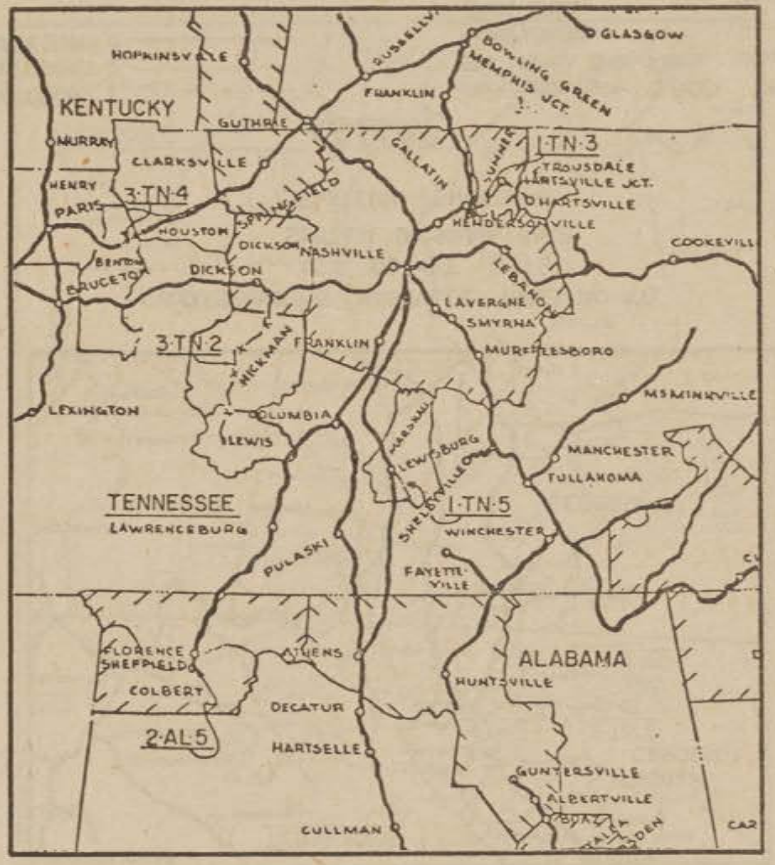
CATEGORY 1		Population over 5,000	
CATEGORY 2		Std. Metrop. Stat. Areas	
CATEGORY 3		County Lines	
CATEGORY 5		State Lines	



LOUISVILLE & NASHVILLE RAILROAD CO.
I.C.C. DOCKET AB-2
SYSTEM DIAGRAM MAP
OHIO

LEGEND

CATEGORY 3		Population over 5,000	
CATEGORY 5		Std. Metrop. Stat. Areas	
		County Lines	
		State Lines	



LOUISVILLE & NASHVILLE RAILROAD CO.
I.C.C. DOCKET AB-2
SYSTEM DIAGRAM MAP
CENTRAL TENNESSEE

LEGEND

CATEGORY 1 — · — · — · —
CATEGORY 2 — — — —
CATEGORY 3 — — — —
CATEGORY 5 ————

Population over 5,000
Std. Metrop. Stat. Areas
County Lines
State Lines

LOUISVILLE & NASHVILLE RAILROAD CO.
I.C.C. DOCKET AB-2
SYSTEM DIAGRAM MAP
EASTERN KENTUCKY

LEGEND

CATEGORY 2 — — — —
CATEGORY 3 — — — —
CATEGORY 5 ————

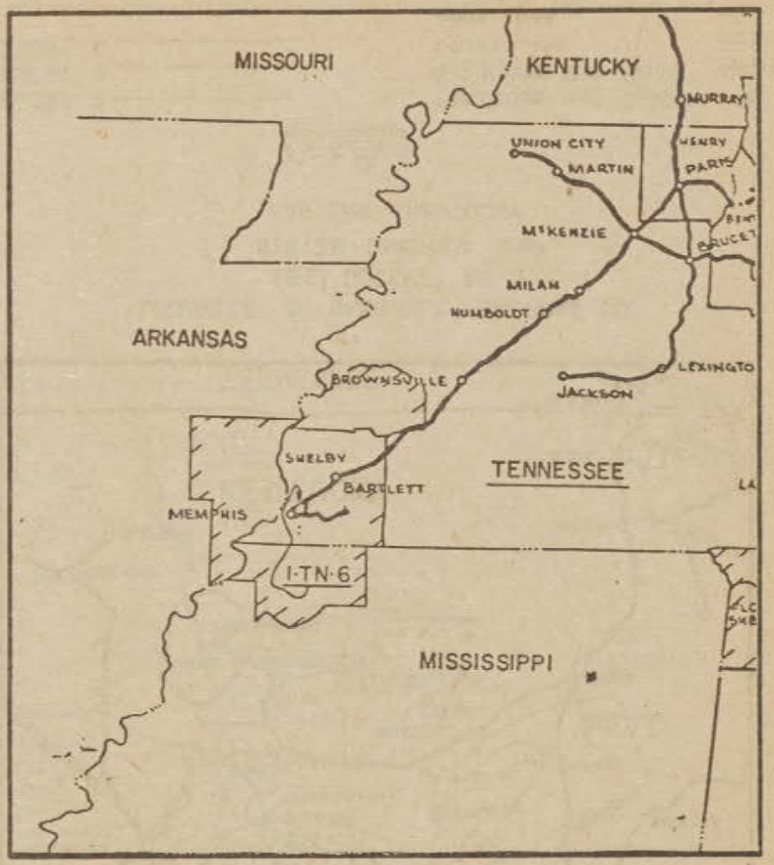
Population over 5,000
Std. Metrop. Stat. Areas
County Lines
State Lines

LOUISVILLE & NASHVILLE RAILROAD CO.
I.C.C. DOCKET AB-2
SYSTEM DIAGRAM MAP
EASTERN TENNESSEE

LEGEND

CATEGORY 1 ——·——·——
CATEGORY 2 — — — —
CATEGORY 5 ————

Population over 5,000
Std. Metrop. Stat. Areas
County Lines
State Lines

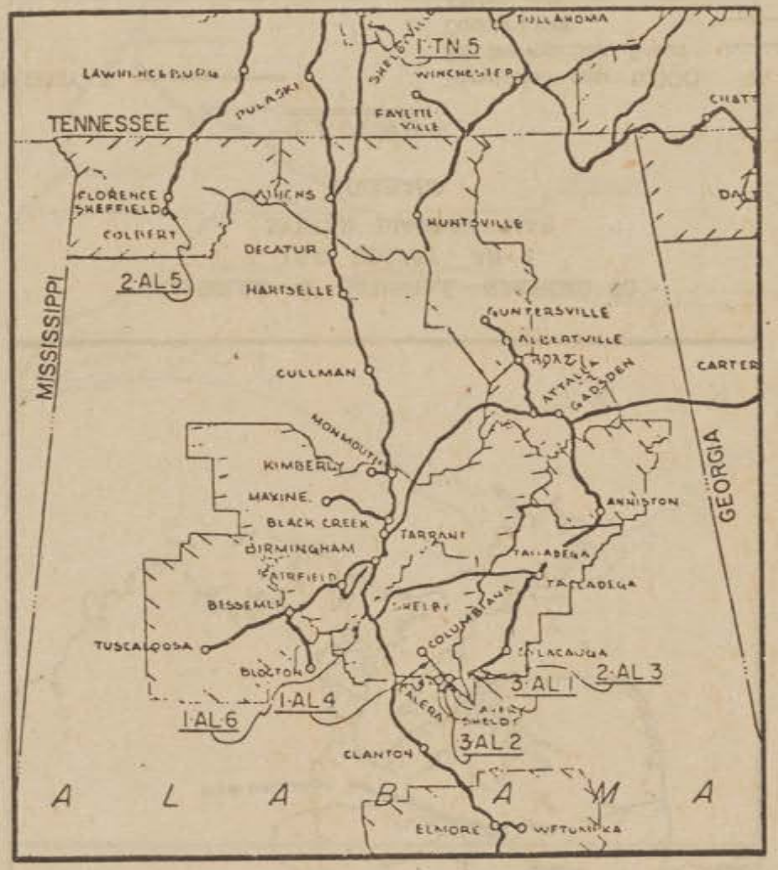


LOUISVILLE & NASHVILLE RAILROAD CO.
I.C.C. DOCKET AB-2
SYSTEM DIAGRAM MAP
WESTERN TENNESSEE

LEGEND

CATEGORY 1 ——·——·——
CATEGORY 5 ————

Population over 5,000
Std. Metrop. Stat. Areas
County Lines
State Lines

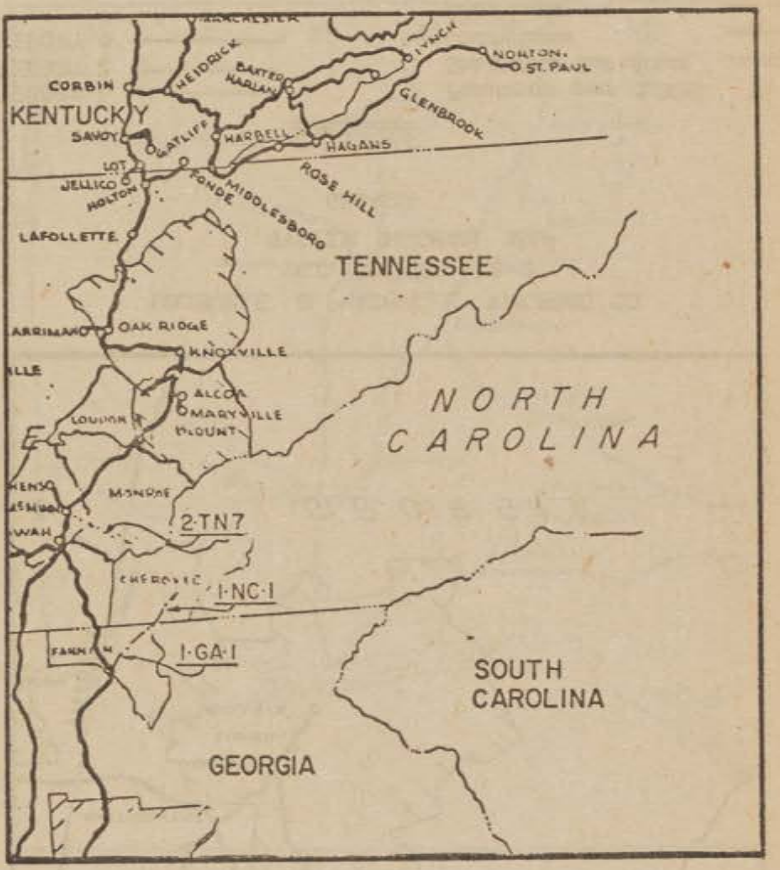


LOUISVILLE & NASHVILLE RAILROAD CO.
I.C.C. DOCKET AB-2
SYSTEM DIAGRAM MAP
NORTHERN ALABAMA

LEGEND

CATEGORY 1 —·—·—·—
CATEGORY 2 — — — —
CATEGORY 3 —x—x—
CATEGORY 5 ———

Population over 5,000
Std. Metrop. Stat. Areas
County Lines
State Lines



LOUISVILLE & NASHVILLE RAILROAD CO.
I.C.C. DOCKET AB-2
SYSTEM DIAGRAM MAP
NORTH CAROLINA

LEGEND

CATEGORY 1 —·—·—·—
CATEGORY 5 ———

Population over 5,000
Std. Metrop. Stat. Areas
County Lines
State Lines

LOUISVILLE & NASHVILLE RAILROAD CO.
I.C.C. DOCKET AB-2
SYSTEM DIAGRAM MAP
LOUISIANA

LEGEND

CATEGORY 5 ——————

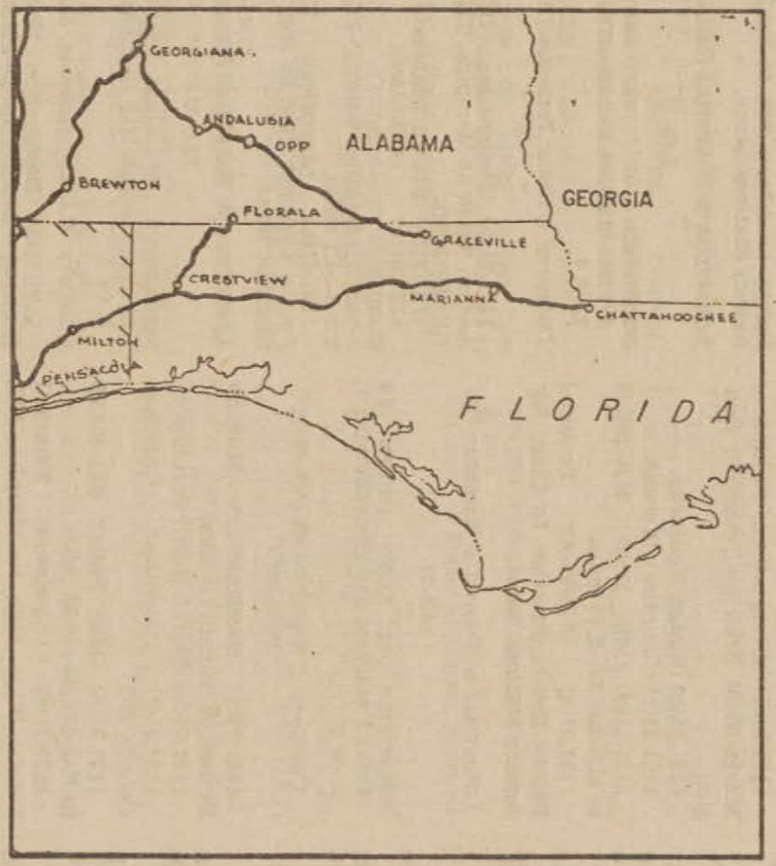
Population over 5,000
Std. Metrop. Stat. Areas
County Lines
State Lines

LOUISVILLE & NASHVILLE RAILROAD CO.
I.C.C. DOCKET AB-2
SYSTEM DIAGRAM MAP
GEORGIA

LEGEND

CATEGORY 1 — · — · —
CATEGORY 2 — — — —
CATEGORY 5 ——————

Population over 5,000
Std. Metrop. Stat. Areas
County Lines
State Lines

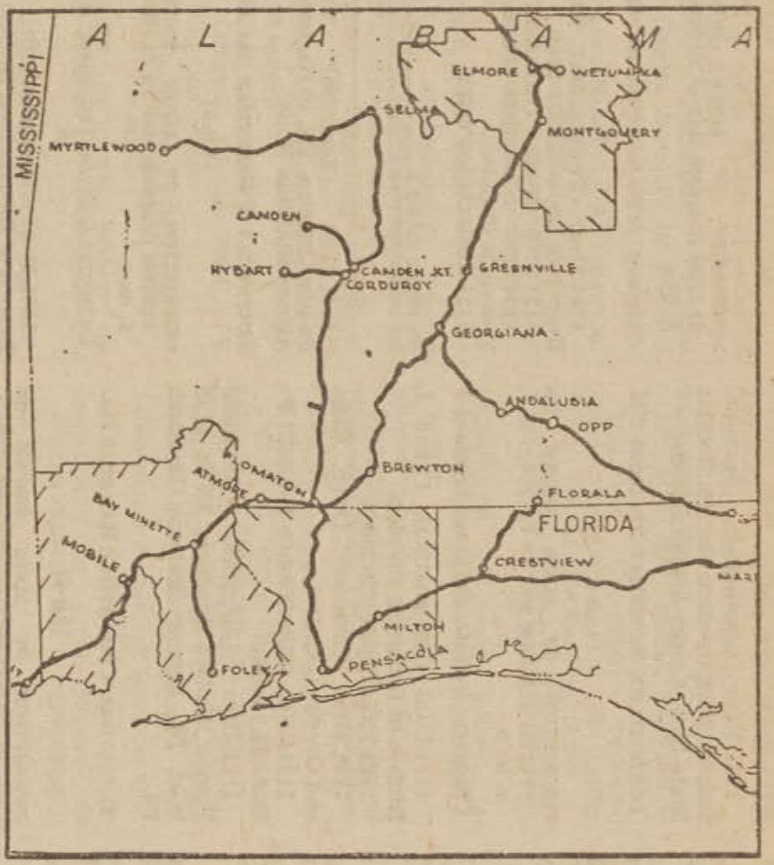


LOUISVILLE & NASHVILLE RAILROAD CO.
I.C.C. DOCKET AB-2
SYSTEM DIAGRAM MAP
FLORIDA

LEGEND

CATEGORY 5 ———

Population over 5,000
Std. Metrop. Stat. Areas
County Lines
State Lines



LOUISVILLE & NASHVILLE RAILROAD CO.
I.C.C. DOCKET AB-2
SYSTEM DIAGRAM MAP
SOUTHERN ALABAMA

LEGEND

CATEGORY 5 ———

Population over 5,000
Std. Metrop. Stat. Areas
County Lines
State Lines

LOUISVILLE & NASHVILLE RAILROAD CO.

[AB-2]

DESCRIPTION OF LINES SHOWN ON SYSTEM DIAGRAM MAP IN CATEGORIES 1, 2, OR 3

Category: 1; State: Alabama; Segment 4

112.21(a) (Designation): Portion of Alabama Mineral Branch—Birmingham Division and Columbiana Branch.
112.21(b) (State): Alabama.
1121.21(c) (Counties): Shelby.
1121.21(d) (Mile Posts):

	Miles
AM-425.0 to AM-436.0	11.0
AS-435.5 to AS-440.8	5.3
Total	16.3

1121.21(e) (Agencies): Terminal Points: Calera to Columbiana. Agency Stations: Columbiana.

LOUISVILLE & NASHVILLE RAILROAD CO.

[AB-2]

DESCRIPTION OF LINES SHOWN ON SYSTEM DIAGRAM MAP IN CATEGORIES 1, 2, OR 3

Category: 1; State: Alabama; Segment 5

1121.21(a) (Designation): Portion of NF&S Branch—Birmingham Division.
1121.21(b) (State): Alabama.
1121.21(c) (Counties): Colbert.
1121.21(d) (Mile Posts): A-316.0 to A-316.64—0.64 mile.
1121.21(e) (Agencies): Terminal Points: Sheffield to end of line. Agency Stations: None.

LOUISVILLE & NASHVILLE RAILROAD CO.

[AB-2]

DESCRIPTION OF LINES SHOWN ON SYSTEM DIAGRAM MAP IN CATEGORIES 1, 2, OR 3

Category: 1; State: Alabama; Segment 6

1121.21(a) (Designation): Helena and Blocton Branch of Birmingham Division.
1121.21(b) (State): Alabama.
1121.21(c) (Counties): Shelby.
1121.21(d) (Mile Posts): LM-408.23 to LM-418.18—9.95 miles.
1121.21(e) (Agencies): Terminal Points: Tacoa, AL to Gurnee Junction. Agency Stations: None.

LOUISVILLE & NASHVILLE RAILROAD CO.

[AB-2]

DESCRIPTION OF LINES SHOWN ON SYSTEM DIAGRAM MAP IN CATEGORIES 1, 2, OR 3

Category: 1; State: Georgia; Segment 1

1121.21(a) (Designation): Murphy Branch of Atlanta Division.
1121.21(b) (State): Georgia.
1121.21(c) (Counties): Fannin County.
1121.21(d) (Mile Posts): KG-416.8 to KG-403.85—10.35 miles.
1121.21(e) (Agencies): Terminal Points: Murphy Junction to Georgia State Line. Agency Stations: None.

LOUISVILLE & NASHVILLE RAILROAD CO.

[AB-2]

DESCRIPTION OF LINES SHOWN ON SYSTEM DIAGRAM MAP IN CATEGORIES 1, 2, OR 3

Category: 1; State: Indiana; Segment 2

1121.21(a) (Designation): I and L Branch of Louisville Division.
1121.21(b) (State): Indiana.
1121.21(c) (Counties): Owen, Clay, and Greene Counties.
1121.21(d) (Mile Posts): F-0.0 to F-42.2—42.2 miles.
1121.21(e) (Agencies): Terminal Points: Wallace Junction, IN to Midland, IN. Agency Stations: Midland, IN.

LOUISVILLE & NASHVILLE RAILROAD CO.

[AB-2]

DESCRIPTION OF LINES SHOWN ON SYSTEM DIAGRAM MAP IN CATEGORIES 1, 2, OR 3

Category: 1; State: Kentucky; Segment 7

1121.21(a) (Designation): Portion of Morganfield Branch—Evansville Division.
1121.21(b) (State): Kentucky.
1121.21(c) (Counties): Webster.
1121.21(d) (Mile Posts): MB-296.92 to MB-299.37—2.45 miles.
1121.21(e) (Agencies): Terminal Points: Dotiki Junction to Clay, Ky. Agency Stations: None.

LOUISVILLE & NASHVILLE RAILROAD CO.

[AB-2]

DESCRIPTION OF LINES SHOWN ON SYSTEM DIAGRAM MAP IN CATEGORIES 1, 2, OR 3

Category: 1; State: North Carolina; Segment 1

1121.21(a) (Designation): Murphy Branch of Atlanta Division.
1121.21(b) (State): North Carolina.
1121.21(c) (Counties): Cherokee County, NC.
1121.21(d) (Mile Posts): KG-403.85 to KG-416.80—12.95 miles.
1121.21(e) (Agencies): Terminal Points: State Line to Murphy, NC. Agency Stations: Murphy, NC.

LOUISVILLE & NASHVILLE RAILROAD CO.

[AB-2]

DESCRIPTION OF LINES SHOWN ON SYSTEM DIAGRAM MAP IN CATEGORIES 1, 2, OR 3

Category: 1; State: Tennessee; Segment 3

1121.21(a) (Designation): Hartsville Branch of Louisville Division.
1121.21(b) (State): Tennessee.
1121.21(c) (Counties): Sumner and Trousdale Counties.
1121.21(d) (Mile Posts):

	Miles
CN-163.0 to CN-168.2	5.2
HB-168.2 to HB-179.6	11.4
Total	16.6

1121.21(e) (Agencies): Terminal Points: Gallatin, TN, to Hartsville, TN. Agency Stations: None.

LOUISVILLE & NASHVILLE RAILROAD CO.

[AB-2]

DESCRIPTION OF LINES SHOWN ON SYSTEM DIAGRAM MAP IN CATEGORIES 1, 2, OR 3

Category: 1; State: Tennessee; Segment 5

1121.21(a) (Designation): Belfast Branch of Birmingham Division.
1121.21(b) (State): Tennessee.
1121.21(c) (Counties): Marshall.
1121.21(d) (Mile Posts): MP-61.0 lto MP-64.3—3.3 miles.
1121.21(e) (Agencies): Terminal Points: Lewisburg, TN, to Belfast, TN. Agency Stations: None.

LOUISVILLE & NASHVILLE RAILROAD CO.

[AB-2]

DESCRIPTION OF LINES SHOWN ON SYSTEM DIAGRAM MAP IN CATEGORIES 1, 2, OR 3

Category: 1; State: Tennessee; Segment 6

1121.21(a) (Designation): ICG Connection Track at Memphis, TN—Nashville Division.
1121.21(b) (State): Tennessee.
1121.21(c) (Counties): Shelby County.
1121.21(d) (Mile Posts): F-372.2 to F-376.3—4.1 miles.
1121.21(e) (Agencies): Terminal Points: Leewood Yard to end. Agency Stations: None.

LOUISVILLE & NASHVILLE RAILROAD CO.

[AB-2]

DESCRIPTION OF LINES SHOWN ON SYSTEM DIAGRAM MAP IN CATEGORIES 1, 2, OR 3

Category: 2; State: Alabama; Segment 3

1121.21(a) (Designation): Portion of Huntsville Branch No. 2—Birmingham Division.

1121.21(b) (State): Alabama.
1121.21(c) (Counties): Talladega.
1121.21(d) (Mile Posts): LE-448.0 to LE-453.5—5.5 miles.
1121.21(e) (Agencies): Terminal Points: Gantts Junction to Fayetteville. Agency Stations: None.

LOUISVILLE & NASHVILLE RAILROAD CO.

[AB-2]

DESCRIPTION OF LINES SHOWN ON SYSTEM DIAGRAM MAP IN CATEGORIES 1, 2, OR 3

Category: 2; State: Indiana; Segment 4

1121.21(a) (Designation): French Lick Branch of Louisville Division.
1121.21(b) (State): Indiana.
1121.21(c) (Counties): Orange County.
1121.21(d) (Mile Posts): D-0.0 to D-8.88—8.88 miles.
1121.21(e) (Agencies): Terminal Points: Orleans, IN, to Paoli, IN. Agency Stations: None.

LOUISVILLE & NASHVILLE RAILROAD CO.

[AB-2]

DESCRIPTION OF LINES SHOWN ON SYSTEM DIAGRAM MAP IN CATEGORIES 1, 2, OR 3

Category: 2; State: Kentucky; Segment 4

1121.21(a) (Designation): Portion of Greensburg Branch of Louisville Division.
1121.21(b) (State): Kentucky.
1121.21(c) (Counties): Marion, Taylor.
1121.21(d) (Mile Posts): I-68.04 to I-88.00—19.96 miles.
1121.21(e) (Agencies): Terminal Points: Lebanon, KY, to Campbellsville, KY. Agency Stations: None.

LOUISVILLE & NASHVILLE RAILROAD CO.

[AB-2]

DESCRIPTION OF LINES SHOWN ON SYSTEM DIAGRAM MAP IN CATEGORIES 1, 2, OR 3

Category: 2; State: Kentucky; Segment 5

1121.21(a) (Designation): Portion of Bardstown Branch of Louisville Division.
1121.21(b) (State): Kentucky.
1121.21(c) (Counties): Nelson and Washington.
1121.21(d) (Mile Posts): B-43.0 to B-59.4—16.4 miles.
1121.21(e) (Agencies): Terminal Points: Bardstown, KY, to Springfield, KY. Agency Stations: Springfield, KY.

LOUISVILLE & NASHVILLE RAILROAD CO.

[AB-2]

DESCRIPTION ON LINES SHOWN ON SYSTEM DIAGRAM MAP IN CATEGORIES 1, 2, OR 3

Category: 2; State: Tennessee; Segment 7

1121.21(a) (Designation): Porition of Athens and Tellico Branch—Corbin Division.
1121.21(b) (State): Tennessee.
1121.21(c) (Counties): McMinn and Monroe Counties.
1121.21(d) (Mile Posts): KB-326.3 to KB-341.5—15.2 miles.
1121.21(e) (Agencies): Terminal Points: Englewood, TN, to Tellico Plains, TN. Agency Stations: None.

LOUISVILLE & NASHVILLE RAILROAD CO.

[AB-2]

DESCRIPTION OF LINES SHOWN ON SYSTEM DIAGRAM MAP IN CATEGORIES 1, 2, OR 3

Category: 3; State: Alabama; Segment 1

1121.21(a) (Designation): Portion of Huntsville Branch No. 2—Birmingham Division.
1121.21(b) (State): Alabama.
1121.21(c) (Counties): Talladega.
1121.21(d) (Mile Posts): LE(AM) 448.0 to LE(AM) 444.9—3.1 miles.
1121.21(e) (Agencies): Terminal Points: Fayetteville to Talladega Springs. Agency Stations: None.

LOUISVILLE & NASHVILLE RAILROAD CO.

[AB-2]

DESCRIPTION OF LINES SHOWN ON SYSTEM DIAGRAM MAP IN CATEGORIES 1, 2, OR 3

Category: 3; State: Alabama; Segment 2

1121.21(a) (Designation): Portion of Alabama Mineral Branch—Birmingham Division.
1121.21(b) (State): Alabama.
1121.21(c) (Counties): Shelby.
1121.21(d) (Mile Posts): AM 436.0 to AM 441.8—5.8 miles.
1121.21(e) (Agencies): Terminal Points: Avery to Shelby. Agency Stations: None.

LOUISVILLE & NASHVILLE RAILROAD CO.

[AB-2]

DESCRIPTION OF LINES SHOWN ON SYSTEM DIAGRAM MAP IN CATEGORIES 1, 2, OR 3

Category: 3; State: Kentucky; Segment 1

1121.21(a) (Designation): Paris and Maysville Branch of Corbin Division.
1121.21(b) (State): Kentucky.
1121.21(c) (Counties): Bourbon, Nicholas, Fleming, Mason.
1121.21(d) (Mile Posts): PM-115.21 to PM-164.41—49.20 miles.
1121.21(e) (Agencies): Terminal Points: Paris, KY, to Maysville, KY. Agency Stations: Maysville, KY.

LOUISVILLE & NASHVILLE RAILROAD CO.

[AB-2]

DESCRIPTION OF LINES SHOWN ON SYSTEM DIAGRAM MAP IN CATEGORIES 1, 2, OR 3

Category: 3; State: Kentucky; Segment 2

1121.21(a) (Designation): Lancaster Branch of Louisville Division.
1121.21(b) (State): Kentucky.
1121.21(c) (Counties): Lincoln, Garrard.
1121.21(d) (Mile Posts): RB-104.82 to RB-113.15—8.33 miles.
1121.21(e) (Agencies): Terminal Points: Rowland, KY, to Lancaster, KY. Agency Stations: None.

LOUISVILLE & NASHVILLE RAILROAD CO.

[AB-2]

DESCRIPTION OF LINES SHOWN ON SYSTEM DIAGRAM MAP IN CATEGORIES 1, 2, OR 3

Category: 3; State: Kentucky; Segment 3

1121.21(a) (Designation): Portion of Greensburg Branch of Louisville Division.
1121.21(b) (State): Kentucky.
1121.21(c) (Counties): Taylor, Green.
1121.21(d) (Mile Posts): I-88.00 to I-98.55—10.55 miles.
1121.21 (e) (Agencies): Terminal Points: Campbellsville, KY, to Greensburg, KY. Agency Stations: None.

LOUISVILLE & NASHVILLE RAILROAD CO.

[AB-2]

DESCRIPTION OF LINES SHOWN ON SYSTEM DIAGRAM MAP IN CATEGORIES 1, 2, OR 3

Category: 3; State: Tennessee; Segment 2

1121.21(a) (Designation): Centreville Branch of Nashville Division.
1121.21(b) (State): Tennessee.
1121.21(c) (Counties): Dickson, Hickman.
1121.21(d) (Mile Posts): NA-2.0 to NA-52.5—50.5 miles.
1121.21 (e) (Agencies): Terminal Points: Colesburg, TN, to Hohenwald, TN. Agency Stations: None.

LOUISVILLE & NASHVILLE RAILROAD CO.

[AB-2]

DESCRIPTION OF LINES SHOWN ON SYSTEM DIAGRAM MAP IN CATEGORIES 1, 2, OR 3

Category: 3; State: Kentucky; Segment 4

1121.21(a) (Designation): Portion of Memphis Branch—Nashville Division.
1121.21(b) (State): Tennessee.
1121.21(c) (Counties): Houston and Benton Counties.
1121.21(d) (Mile Posts): F-218.3 to F-229.8.
1121.21 (e) (Agencies): Terminal Points: McKinnon, TN, and Big Sandy, TN. Agency Stations: None.

[FR Doc. 78-8671 Filed 4-3-78; 8:45 am]

sunshine act meetings

This section of the Federal Register contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409), 5 U.S.C. 552b(e)(3).

CONTENTS

[6210-01]

1

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 43 FR 13658, March 31, 1978.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., Wednesday, April 5, 1978.

CHANGES IN THE MEETING: The open meeting scheduled for Wednesday, April 5, 1978 has been cancelled, and all of the items have been rescheduled for an open meeting on Friday, April 7, 1978 at 10 a.m.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board: 202-452-3204.

Dated: March 31, 1978.

GRIFFITH L. GARWOOD,
Acting Secretary of the Board.

[S-708-78 Filed 3-21-78; 2:24 pm]

[6740-02]

2

FEDERAL ENERGY REGULATORY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: (Published March 31, 1978 43 FR 3791).

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: April 5, 1978, 10 a.m.

CHANGE IN THE MEETING: The following items have been added:

Item No., docket No. and company

M-2: RM78- , Notice of Proposed Rulemaking on Emergency Purchases of Natural Gas.

P-4(B): Project No. 2596, Rochester Gas and Electric Co.

P-7: Project No. 460, City of Tacoma, Wash.

KENNETH F. PLUMB,
Secretary.

[S-707-78 Filed 3-31-78; 11:09 am]

[6750-01]

3

FEDERAL TRADE COMMISSION.

TIME AND DATE: 2 p.m., Thursday, April 6, 1978.

PLACE: Room 532 (open); Room 540 (closed) Federal Trade Commission Building, 6th Street and Pennsylvania Avenue, NW., Washington, D.C. 20580.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Portions open to the public.

(1) Oral argument in Verrazzano Trading Corp., et al., Docket No. 9038.

Portions closed to the public:

(2) Post-Oral Argument Meeting to Consider Disposition of Appeals from Initial Decision in *Verrazzano Trading Corp., et al.*, Docket No. 9038.

CONTACT PERSON FOR MORE INFORMATION:

Wilbur T. Weaver, Office of Public Information: 202-523-3830; Recorded Message: 202-523-3806.

[S-704-78 Filed 3-31-78; 9:37 am]

[7020-02]

4

[USITC SE-78-16]

TIME AND DATE: 9:30 a.m., Thursday, April 13, 1978.

PLACE: Room 117, 701 E Street NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints (if necessary): a. Swimming pool covers (Docket No. 504).
5. Carbon steel plate from Japan (inv. AA1921-179)—briefing and vote.
6. Status report on the Genral Counsel's Office.
7. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION:

Kenneth R. Mason, Secretary, 202-523-0161.

[S-706-78 Filed 3-31-78; 11:06 am]

[6320-01]

5

CIVIL AERONAUTICS BOARD.

NOTICE OF CHANGE IN TIME AND DATE OF THE APRIL 4, 1978 MEETING.

TIME AND DATE: 10:00 a.m., April 3, 1978.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: Dockets 31290 and 30891, Proposed Rule, DFFI Fare Level and Structure Policies; Discount Fair Policy (Memo No. 7847, BPDA, OEA, OGC).

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, The Secretary, 202-673-5068.

SUPPLEMENTARY INFORMATION: On March 28, 1978, the Board announced that it would meet on this item on April 4, 1978. Because of conflicts in the schedules of members and staff the only time available is April 3, 1978 at 10:00 a.m.

So that the matter not be delayed, the following members have voted that agency business requires that the meeting be rescheduled from April 4, 1978 to April 3, 1978 at 10:00 a.m. and that no earlier announcement of this change was possible:

Chairman Alfred E. Kahn
Vice Chairman G. Joseph Minetti
Member Lee R. West
Member Richard J. O'Melia
Member Elizabeth E. Bailey

[S-709-78 Filed 3-31-78; 3:49 pm]

[6320-01]

6

CIVIL AERONAUTICS BOARD.

TIME AND DATE: 10 a.m., April 6, 1978.

PLACE: Room 1027, 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUBJECT:

1. Ratification of items adopted by notation.

2. Notice of Rulemaking to change two requirements regarding the filing of briefs to the Board (Memo No. 7845, OGC, BPDA, BLJ, BIA, OS).

3. Part 221—Deletion of requirement to file DOT hazardous materials rules in CAB tariffs (Memo No. 6801-B, OGC, BPDA).

4. Docket 29139, Overbooking and Oversales (Request for Instructions) (OGC).

5. Docket 23315, *Delta-Northeast Merger Case* (Motion be petitioner to dismiss his petition for exercise of retained jurisdiction under the labor protective provisions) (Memo No. 7850, OGC).

6. Docket 29747, *Foreign Air Carrier Permit Investigation,* Order vacating moot Board opinions and orders amending U.K. carrier foreign air carrier permits, which had been returned to the Board by the President, at the Board's request (Memo No. 6355-H, OGC).

7. Docket 32061, Petitions for reconsideration and motions to consolidate in *St. Louis/Kansas City-San Diego Route Proceeding* (Memo No. 7374-B, BLJ, OGC).

8. Dockets 31784 and 32093, Applications for grandfather all-cargo service certificates (Memo No. 7863, BPDA, OGC).

9. Docket 30976, finalizing TWA order to show cause for fill-up rights in the New York-Boston/Detroit/Washington/Baltimore markets (Memo No. 7447-B, BPDA, OGC).

10. Docket 31343, Bonanza Airlines Corp.—Exemption to Operate F-27J Aircraft Between Las Vegas and Aspen and Eagle/Vail (Memo No. 7733-A, BPDA).

11. Dockets 30344 and 30345, Texas International's Requests for Certificate Amendment and Interim Exemption Authority to Overfly Memphis after Providing Only One Daily Round Trip (Memo No. 7851, BPDA)

12. Dockets 29093, 29131 and 29142, Applications of Braniff, Continental and Eastern for removal of single-plane restrictions in Pacific Northwest-Southeast markets, and Docket 29047, Application of Eastern Air Lines pursuant to Subpart N (Atlanta-Portland) (Memo No. 69I6-D, BPDA, OGC).

13. Dockets 31923 and 31924, Southern's Requests for Certificate Amendment and Interim Exemption to Overfly Charlotte after Providing One Daily Round Trip (Memo No. 7861, BPDA).

14. Docket 26218, Frontier's application to renew its suspension at Stillwater, Okla. (Memo No. 4436-E, BPDA).

15. Evergreen International Airlines, Inc., and McCulloch International Airlines, Inc.—petition for review of staff action denying a request for refund of filing fees for "gambling" charter waivers (Memo No. 7001-B, BPDA, Managing Director, OGC).

16. Docket 30226, Temporary Subsidy Mail Rates for Kodiak-Western Alaska Airlines, Inc. (Memo No. 7855, BPDA, Comptroller).

17. Revised passenger fare structure and overall 15 percent fare increase for Air Micronesia (BPDA).

18. Domestic Fare increase proposed by various carriers (BPDA).

19. TWA space available contract rates (BPDA).

20. Dockets 31232, 31234, 31235, 31246, 31247, 31285, 31305, 31534, 31538, 31555, 32192, 32206, 32207, 32210, 32211, 32212, Complaints against North Atlantic summer fare filings (BPDA).

21. Dockets 21866-5, 7, 9, Order to Show Cause why reduced rates for retired persons, senior citizens and handicapped persons pursuant to Pub. L. 95-163 should not be treated as discount fares for normal ratemaking purposes (BPDA).

22. Docket 32163, Amendment of Foreign Air Carrier Permit, Societe Anonyme Belge d'Exploitation de la Navigation Aerienne (SABENA) (Memo No. 7866, BIA, OGC)

23. Docket 32225, Braniff's Application for Certificate Authority Between Dallas-Ft. Worth and Tokyo, Japan (Memo No. 7859, BIA).

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, The Secretary, 202-673-5068.

[S-710-78 Filed 3-31-78; 3:49 pm]

federal register

TUESDAY, APRIL 4, 1978
PART II

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

■

Grants for National Alcohol Research Centers

[4110-88]

Title 42—Public Health

CHAPTER I—PUBLIC HEALTH SERVICE, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER D—GRANTS

PART 54a—GRANTS TO STATES FOR ALCOHOL ABUSE AND ALCOHOLISM PREVENTION, TREATMENT, AND REHABILITATION SERVICES

Subpart E—Grants for National Alcohol Research Centers

AGENCY: Public Health Service, HEW.

ACTION: Interim final regulations.

SUMMARY: These interim final regulations add new rules concerning grants for National Alcohol Research Centers in order to implement section 504 of the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 as amended. Section 504 authorizes the Secretary to designate National Alcohol Research Centers for long-term interdisciplinary research on alcoholism and other alcohol problems and to make grants to such Centers. The regulations set forth requirements for applying for, receiving, and administering Alcohol Research Center grants.

EFFECTIVE DATE: These interim final regulations are effective April 4, 1978. Comments due: May 4, 1978. See supplementary information below for additional information.

ADDRESS: Written comments should be addressed to: Director, National Institute on Alcohol Abuse and Alcoholism, Alcohol, Drug Abuse, and Mental Health Administration, Parklawn Building, Room 16-105, 5600 Fishers Lane, Rockville, Md. 20857. Comments received will be available for inspection at this address from 8:30 a.m. to 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

Dr. Albert Pawlowski, Chief, Extramural Research Branch, Division of Extramural Research, National Institute on Alcohol Abuse and Alcoholism, Alcohol, Drug Abuse, and Mental Health Administration, Parklawn Building, Room 16C-26, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4223.

SUPPLEMENTARY INFORMATION: Grants for National Alcohol Research Centers were authorized by Pub. L. 94-371, enacted in July 1976. Funds for such grants were first appropriated by Pub. L. 95-26, the Supplemental Appropriations Act for 1977, enacted in May 1977. In anticipation of this appropriation, the National Institute on Alcohol Abuse and Alcoholism issued a program announcement and guidelines for Alcohol Research Center grants in April 1977. To date, nearly 30 applications prepared in accordance with these guidelines (which are identical in substance with the attached regulations) have been received, and nine of the applicant institutions have been designated Alcohol Research Centers and awarded grants.

These interim final regulations are effective April 4, 1978. However, interested persons are invited to submit written comments, suggestions, or objections to them on or before May 4, 1978. Following the close of the comment period, the regulations will be revised as warranted by the comments received. It is intended to publish the regulations as revised within sixty (60) days after the end of the public comment period. Any such revision of the interim final regulations will be applicable to grants awarded under the interim final regulations but only with respect to activities conducted under those grants on or after the date the revision becomes effective.

NOTE.—The Department of Health, Education, and Welfare has determined that this document does not contain a major proposal requiring preparation of an inflation impact statement under Executive Order 11821 and OMB Circular A-107.

Dated: September 26, 1977.

JULIUS B. RICHMOND,
Assistant Secretary for Health.

Approved: March 20, 1978.

JOSEPH A. CALIFANO, Jr.,
Secretary.

Accordingly, 42 CFR Part 54a is amended on an interim basis by adding the new Subpart E set forth below:

Subpart E—Grants for National Alcohol Research Centers

AUTHORITY: Sec. 504, 90 Stat. 1035 (42 U.S.C. 4588).

§ 54a.501 Applicability.

The regulations in this subpart apply to grants to develop, establish, and support centers for interdisciplinary research relating to alcoholism and other alcohol problems, as authorized by section 504 of the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act (42 U.S.C. 4588).

§ 54a.502 Definitions.

As used in this subpart:

(a) "Act" means the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act as amended (42 U.S.C. 4541, et seq.).

(b) "Council" means the National Advisory Council on Alcohol Abuse and Alcoholism established under section 217(a) of the Public Health Service Act (42 U.S.C. 218).

(c) "Secretary" means the Secretary of Health, Education, and Welfare and any other officer or employee of the Department of Health, Education, and Welfare to whom the authority involved may be delegated.

(d) "Nonprofit" as applied to a private entity means that no part of the net earnings of such entity inures or may lawfully inure to the benefit of any shareholder or individual.

(e) "National Alcohol Research Center" or "Center" means an institution engaged in long-term interdisciplinary research focused on a central theme relating to alcoholism and other alcohol problems.

(f) "Project period" means the total period of time for which support for a project has been recommended as specified in the grant award document. Such recommendation does not commit or obligate the Federal government to any addition, supplemental or continuation support beyond the current budget period.

(g) "Budget period" means the interval of time (usually 12 months) into which the project period has been divided for budgetary and reporting purposes and for which the Government has made a financial commitment to fund a particular project.

§ 54a.503 Eligibility.

To be eligible for a grant under this part, an applicant must be:

(a) A public (except Federal) or nonprofit private institution which is or is affiliated with an institution (such as a university, medical center or research center) with the resources to sustain a long-term research program; and

(b) Located in a State, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Trust Territory of the Pacific Islands.

§ 54a.504 Application.

(a) Each institution desiring a grant under this subpart shall submit an application in such form and manner and on or before such dates as the Sec-

retary may from time to time require.[1] Such application shall be executed by an individual authorized to act for the applicant and to assume on behalf of the applicant the obligations imposed by the terms and conditions of the award, including the regulations of this part.

(b) In accordance with section 1-00-30 of the Department of Health, Education, and Welfare Grants Administration Manual,[2] each private institution which does not already have on file with the National Institute on Alcohol Abuse and Alcoholism evidence of nonprofit status must submit with its application acceptable proof of such status.

(c) In addition to any other pertinent information that the Secretary may require, each application shall set forth in detail:

(1) The personnel, facilities, and other resources currently available to the applicant with which to initiate and maintain the proposed Center program;

(2) Any biomedical, behavioral, or social science research related to alcohol problems in which the applicant is currently engaged; the sources of funding for such activities; and the relationship of these activities to the proposed Center program;

(3) The central theme of the proposed interdisciplinary research program;

(4) A detailed 5-year plan for the proposed Center program which identifies the principal areas of proposed research, the relationship of each area of proposed research to the central theme of the proposed Center program, the disciplines to be involved, and plans for coordination among them;

(5) A detailed description of each separate research project for which funds are requested;

(6) The names and qualifications of the Center director and key staff members who would be responsible for conducting proposed activities of the Center;

(7) The opportunities that would be available for training;

(8) The organizational structure of the proposed Center and its relationship to the organizational structure of the applicant;

(9) The proposed project period (not to exceed 5 years); a detailed budget and justification of funds requested for core support as well as for each separate research project (not exceeding $1,000,000 in total in any year); and a list of other anticipated sources of support for all research activities at the applicant institution, both planned and ongoing, relevant to alcoholism and other alcohol problems (both those to be incorporated into the proposed Center program and those outside the Center).

(10) Proposed methods for monitoring and evaluating individual research activities and the overall Center program;

(11) To the extent not covered in the information submitted under preceding subparagraphs, the manner in which the requirements in § 54a.505 will be satisfied.

§ 54a.505 Program requirements.

In order to receive support under this subpart, an applicant must:

(a) Have the experience or capability to conduct, through biomedical, behavioral, social, and related disciplines, long-term research on alcoholism and other alcohol problems and to coordinate such research among such disciplines;

(b) Have available to it staff, facilities, and other resources with which to carry out the objectives of the proposed program;

(c) Have available to it sufficient laboratory facilities and reference services (including reference services that will afford access to scientific alcohol literature);

(d) Have facilities and personnel to provide training in the prevention and treatment of alcoholism and other alcohol problems;

(e) Have the capacity to train predoctoral and postdoctoral students for careers in research on alcoholism and other alcohol problems;

(f) Have the capacity to conduct courses on alcohol problems and research on alcohol problems for undergraduate and graduate students and for medical and osteopathic students and physicians;

(g) Provide assurances that the Center will be an identifiable organizational unit of the applicant headed by a Center director responsible for the Center program;

(h) Provide assurances that any significant changes in the Center's scientific activities or other activities will be made only with the prior approval of the Secretary; and

(i) Establish a Program Advisory Committee, chaired by the Center director, to review and make recommendations to the center director on the conduct of all activities of the center. The Committee shall be composed of persons who are not associated with the Center (apart from their membership on the Committee).

§ 54a.506 Grant awards.

(a) Within the limits of funds available, the Secretary, after taking into account the comments of an appropriate peer review group, may award grants to applicants with proposed programs which have been recommended for approval by the council and will in his judgment best promote the purposes of section 504 of the Act, taking into consideration among other pertinent factors:

(1) The scientific and technical merit of the proposed program and its individual components;

(2) The significance of the proposed program to the goals of the National Alcohol Research Centers progam;

(3) The qualifications and experience of the Center director and other key personnel;

(4) The extent to which the various components of the proposed research program would be coordinated into an interdisciplinary effort within the Center;

(5) The administrative and managerial capability of the applicant;

(6) The reasonableness of the proposed budget in relation to the proposed program;

(7) The adequacy of proposed methods for monitoring and evaluating the overall Center program and its components including proposed mechanisms for review of the Center's program by its Program Advisory Committee;

(8) The potential of the proposed Center to become a significant regional and national research resource; and

(9) The degree to which the application adequately provides for the requirements of § 54a.505.

(b) All grant awards shall be in writing and shall specify the project period (not to exceed 5 years), the total recommended amount of funds for the project period, the approved budget for the budget period, and the amount awarded (not in excess of $1,000,000 in any year) for the budget period.

(c) Neither the approval of any application nor any grant award shall commit or obligate the United States in any way to make any additional, supplemental, continuation, or other award with respect to any approved application or portion thereof.

(d) The amount of any grant award shall be determined by the Secretary on the basis of his estimate of the sum necessary to pay all or part of the allowable costs for the budget period covered by the award.

(e) An initial 5-year project period may be extended by the Secretary for additional periods not in excess of 5 years each, after review of the operations of the grantee by an appropriate peer review group and with the

[1] Grant applications, instructions, and program guidelines may be obtained from the Director of the National Institute on Alcohol Abuse and Alcoholism, 5600 Fishers Land, Rockville, Md. 20857.

[2] The Department of Health, Education, and Welfare Grants Administration Manual is available for public inspection and copying at the Department's and Regional Offices' information centers listed in 45 CFR § 5.31 and may be purchased from the Superintendent of Documents, U.S. Printing Office, Washington, D.C. 20402.

Council's recommendation for approval, except that if an additional period of support involves only the expenditure of funds previously awarded, peer review and consultation with the Council are not required.

§ 54a.507 Payment.

The Secretary shall from time to time make payments to a grantee of all or a portion of any grant award, either in advance or by way of reimbursement, for expenses incurred or to be incurred in accordance with its approved application.

§ 54a.508 Expenditure of grant funds.

(a) Any funds granted pursuant to this part shall be expended solely for the purpose for which the funds were granted in accordance with the approved application and budget, the regulations of this part, the terms and conditions of the award, and the applicable cost principles prescribed by subpart Q of 45 CFR part 74, except that no such funds may be expended for trainee stipends, fees, or other expenses directly relating to training or for the purchase or rental of any land or the rental, purchase, construction, preservation, or repair of any building. For purposes of this paragraph, construction means the construction of new buildings, and the expansion, remodeling, and alteration of existing buildings, including architects' fees, but not including the cost of acquisition of land or off-site improvements, and equipping new buildings and existing buildings, whether or not expanded, remodeled, or altered.[3]

(b) Any unobligated grant funds remaining in the grant account at the close of a budget period may, with the prior approval of the Secretary, be carried forward and remain available for obligation during the remainder of the project period and any extensions thereof (approved in accordance with § 54a.506(e) of this part), subject to such limitations as the Secretary may prescribe. The amount of any subsequent award will take into consideration unobligated grant funds remaining in the grant account. At the end of the final project period any unobligated grant funds remaining in the grant account must be refunded to the Federal Government.

§ 54a.509 Nondiscrimination.

(a) Attention is called to the requirements of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) which provides that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. A regulation implementing such title has been promulgated (45 CFR part 80).

(b) Attention is called to the requirements of section 303 of the Age Discrimination Act of 1975 (42 U.S.C. 6102). That section provides that pursuant to regulations which shall be effective no earlier than January 1, 1979, no person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance, except as provided by sections 304(b) and 304(c) of the Age Discrimination Act of 1975 (42 U.S.C. 6103 (b) and (c)).

(c) Attention is called to the requirements of title IX of the Education Amendments of 1972 and in particular to section 901 of such Act (20 U.S.C. 1681) which provides that no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance. A regulation implementing such section has been promulgated (45 CFR part 86).

(d) Attention is called to the requirements of section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), which provides that no otherwise qualified handicapped individual in the United States shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance. A regulation implementing such section has been promulgated (45 CFR part 84).

(e) Attention is called to the requirements of section 321 of the Act (42 U.S.C. 4581) which provide that alcohol abusers and alcoholics who are suffering from medical conditions shall not be discriminated against in admission or treatment, solely because of their alcohol abuse or alcoholism, by any private or public general hospital or outpatient facility (as defined in section 1633(6) of the Public Health Service Act, 42 U.S.C. 300s-3(6)) which receives support in any form from any program supported in whole or in part by funds appropriated to any Federal department or agency. A regulation implementing such section has been promulgated (45 CFR § 84.53).

§ 54a.510 Confidentiality of patient records.

Attention is called to section 333 of the Act (42 U.S.C. 4582) which provides that records of the identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with the performance of any program or activity relating to alcoholism or alcohol abuse education, training, treatment, rehabilitation, or research, which is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States, shall be confidential and may be disclosed only for the purposes and under the circumstances expressly authorized under section 333 of the Act. Violations of section 333 are subject to a fine of not more than $500 in the case of a first offense and not more than $5,000 in the case of each subsequent offense. A regulation implementing such section has been promulgated (42 CFR part 2).

§ 54a.511 Human subjects.

Attention is called to the requirements of 45 CFR part 46 pertaining to the protection of human subjects.

§ 54a.512 Animal welfare.

Attention is called to the requirements of chapter 1-43 of the Department of Health, Education, and Welfare Grants Administration Manual pertaining to animal welfare.

§ 54a.513 Applicability of 45 CFR part 74.

The provisions of 45 CFR part 74, establishing uniform administrative requirements and cost principles, shall apply to all grants under this subpart to State and local governments as those terms are defined in subpart A of part 74. The relevant provisions of the following subparts of part 74 shall also apply to grants to all other grantee organizations under this subpart:

Subpt.:	*45 CFR pt. 74*
A	General.
B	Cash depositories.
C	Bonding and insurance.
D	Retention and custodial requirements for records.
F	Grant-related income.
G	Matching and cost sharing.
K	Grant payment requirements.
L	Budget revision procedures.
M	Grant closeout, suspension, and termination.
O	Property.
Q	Cost principles.

§ 54a.514 Progress and fiscal records and reports.

Each grant award shall require that the grantee maintain such progress and fiscal records and file with the Secretary such progress and fiscal reports relating to the conduct and results of the approved grant and the use of grant funds as the Secretary may find necessary to carry out the purposes of section 504 of the Act and the regulations.

[3] Section 504(b) of the Act provides that for the purposes of that paragraph the term "construction" shall have the meaning given to it by section 702(2) of the Public Health Service Act (42 U.S.C. 292a). The above definition incorporates the language of section 702(2) in effect on July 26, 1976, the date of the enactment of section 504 by Pub. L. 94-371.

§ 54a.515 Grantee accountability.

(a) *Accounting for grant payments.* All payments made by the Secretary shall be recorded by the grantee in accounting records which identify adequately the source and application of funds for grant supported activities. These records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income. With respect to each approved project the grantee shall account for the sum total of all amounts paid by presenting or otherwise making available evidence satisfactory to the Secretary of expenditures for costs meeting the requirements of this subpart. However, when the amount awarded for indirect costs is based on a predetermined fixed percentage of estimated direct costs, the amount allowed for indirect costs shall be computed on the basis of such predetermined fixed-percentage rates applied to the total, or a selected element thereof, of the reimbursable direct costs incurred.

(b) *Accounting for royalties.* Royalties received by grantees from copyrights on publications or other works developed under the grant or from patents or inventions conceived or first actually reduced to practice in the course of or under the grant shall be accounted for as follows:

(1) Royalties received during the period of grant support as a result of copyrights or patents shall be retained by the grantee and, in accordance with the terms and conditions of the grant, be disposed of under either or a combination of the following options:

(i) Used by the grantee for any purposes that further the objectives of the legislation under which the grant was made.

(ii) Deducted from the total project costs for the purpose of determining the net costs on which the Federal share of costs will be based.

(2) Royalties received after the completion or termination of grant support shall be disposed of as follows:

(i) Patent royalties shall be governed by agreements between the Assistant Secretary for Health, Department of Health, Education, and Welfare, and the grantee pursuant to the Department's patent regulations (45 CFR parts 6 and 8).

(ii) Copyright royalties may be retained by the grantee, unless the terms and conditions of the grant or a specific agreement negotiated between the Secretary and the grantee provide otherwise except State or local government grantees which receive royalties in excess of $200 a year shall return the Federal share of the excess amount (computed by applying the percentage of Federal participation in the cost of the grant supported project to the excess amount) to the Federal Government, unless a specific agreement provides otherwise.

§ 54a.516 Publications and copyrights.

(a) *Copyright.* Except as may otherwise be provided under the terms and conditions of the award, the grantee is free to copyright any book or other copy-rightable materials developed under the grant subject to a royalty-free, nonexclusive, and irrevocable license of the Department of Health, Education, and Welfare to reproduce, publish, alter, or otherwise use, and to authorize others to use the work for Government purposes. In any case in which a copyright has been obtained, the Secretary shall be so notified.

(b) *Publications.* Any reports, papers, statistics, or other materials developed from work supported in whole or in part by an award made under this subpart shall be submitted to the Secretary. The Secretary may make such materials available and disseminate the material on as broad a basis as practicable, and in such form as to make such materials understandable.

§ 54a.517 Additional conditions.

The Secretary may with respect to any grant award impose additional conditions prior to or at the time of any award when in his judgment such conditions are necessary to assure or protect advancement of the approved program, the interest of public health or the conservation of grant funds.

[FR Doc. 78-8499 Filed 4-3-78; 8:45 am]

federal register

TUESDAY, APRIL 4, 1978
PART III

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

■

COMPREHENSIVE PLANNING FOR RURAL DEVELOPMENTS

Area Development Assistance Planning Grants

[3410-07]

Title 7—Agriculture

CHAPTER XVIII—FARMERS HOME ADMINISTRATION, DEPARTMENT OF AGRICULTURE

SUBCHAPTER L—LOAN AND GRANT MAKING

[FmHA Instruction 1948-A]

PART 1948—RURAL DEVELOPMENT

Subpart A—Area Development Assistance Planning Grants

Addition

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) issues final regulations concerning Area Development Assistance Planning Grants for comprehensive planning for rural development. The intended effect of this action is to provide regulations for the making of grants to eligible organizations for comprehensive planning for rural development. This action, required by Pub. L. 92-419, was made possible by the appropriation contained in Pub. L. 95-97.

EFFECTIVE DATE: April 4, 1978.

FOR FURTHER INFORMATION CONTACT: Mr. Paul R. Kugler, 202-447-2573.

SUPPLEMENTARY INFORMATION: On page 5488 of the FEDERAL REGISTER for Wednesday, February 8, 1978, the Farmers Home Administration published a notice of proposed rule making regarding addition of a new Part 1948, Subpart A, "Area Development Assistance Planning Grants," to Chapter XVIII, Title 7 in the Code of Federal Regulations. Numerous comments have been accepted and analyzed and are discussed below.

FmHA received 112 responses to the February 8, 1978, publication as of March 23, 1978. These comments were seriously considered and were the basis of several changes in the final regulations. The major comments and changes are noted below.

1. *Section 1948.1.* Comments were received concerning the possibility of greater involvement by the State and Local Rural Development Committees in the application process of the Area Development Assistance Program. FmHA has determined that, due to the wide diversity in composition of these Committees, the A-95 review process will generally provide sufficient involvement and will not preclude additional involvement where necessary and feasible.

2. *Section 1948.3.* Comments were received concerning the development of comprehensive planning for rural development and the emphasis on the areas of unemployment, underemployment, low family incomes, and the problems of minorities. It should be recognized that the rural development planning program is designed to encourage the development of comprehensive planning for rural areas in all conceivable areas of rural concerns. As stated in Section 306(a)(11) of the Consolidated Farm and Rural Development Act, the grants must be used for comprehensive planning purposes and may not be used for project demonstration or project implementation efforts.

3. *Section 1948.5(b).* Comments were received which recommended an expansion of the definition of comprehensive planning to include technical assistance activities related to implementation of planning efforts. While FmHA recognizes the need for technical assistance oriented toward implementation, it does not have the authority to fund activities not within the definition of comprehensive planning in accord with the Consolidated Farm and Rural Development Act.

4. *Section 1948.5(d).* Numerous comments were received regarding the definition of "rural" and "rural area." These terms are defined in the Consolidated Farm and Rural Development Act and FmHA is required to use the definition as written in the statute.

5. *Section 1948.5(h).* Comments were received indicating that inclusion of single counties in the definition of "Substate district" created confusion. Changes were made to clarify this definition and to provide for those instances where, in fact, a single county has been formally designated as a substate district and would not choose to be considered under the definition of "Units of general local government" (1948.5(i)).

6. *Section 1948.10(a).* Many comments were received expressing concern that Grantees would experience financial burdens in attempting to meet their required cash share and that this requirement was not consistent with OMB Circular A-102, Attachment F. Accordingly this section has been changed to be consistent with Circular A-102 allowing for all of the Grantee's share of total project costs to be met by cash, services, or a combination of both.

7. *Section 1948.10(b).* Numerous comments were received critical of the 25 percent limitation of indirect costs and indicating inconsistency with Federal regulations and policies as expressed in Federal Management Circular 74-4. This section has been deleted.

8. *Section 1948.13(a).* Comments were received concerning the eligibility of Indian Tribes and Nations. The language has been changed for clarity. Additional comments were received concerning the eligibility of substate districts in the absence of an areawide clearinghouse. All substate districts are eligible whether or not they are the areawide clearinghouse provided all other criteria are met. Also, it should be noted that public and private universities are eligible as public or private nonprofit organizations provided all other criteria are met.

9. *Section 1948.15(a).* Several comments were received concerning the rural area to be included in a planning project. This relates to the definition of "rural" and "rural area" which is based on Section 306(a)(7) of the Consolidated Farm and Rural Development Act and cannot be administratively revised.

10. *Section 1948.18.* Comments were received concerning the permissibility of using consultants for the planning project activity. Third party contracts are permitted consistent with OMB Circular A-102, Attachment O, and the language in the grant agreement has been changed accordingly.

11. *Section 1948.20.* Some comments were received relating to the ban on funds to replace or substitute previously provided or assured financial support. FmHA's intentions are to maintain current applicant effort and to fund new planning program initiatives in rural areas. This Section has been clarified.

12. *Section 1948.23.* Comments were received concerning the environmental impact requirements under these regulations. Section 1948.23 expresses the policy of the FmHA with regard to this issue, and a statement has been added to § 1948.15 to emphasize this policy.

13. *Section 1948.28.* Numerous comments were received expressing confusion about the relationship between areawide planning agencies designated pursuant to OMB Circular A-95 and areawide planning agencies or substate districts without such designation. In addition, OMB has advised FmHA that it is not necessary to include specific A-95 requirements in these regulations (§ 1948.13(b)). While FmHA recognizes that this inclusion is not required, it has decided to provide a more complete explanation of this requirement in 1948.13(b). A new Section 1948.28 has been inserted to reflect all requirements pertaining to OMB Circular A-95.

14. *Section 1948.29.* Several comments were received concerning the lack of clarity and areas of possible duplication in this section. In addition, other comments were critical of inconsistency with OMB Circular A-102, Attachment M, Circular A-110, and Federal Management Circular 74-4. While this might appear to be the case, the application procedure is totally consistent with the Standard Federal Forms

and procedures as promulgated by OMB. FmHA Forms AD-621, AD-622 and AD-623, are consistent with the OMB Standard Federal format as prescribed by OMB Circular A-102. This Section has been rewritten to resolve these concerns and provide clear direction.

15. *Section 1948.32.* Comments were received concerning the lack of emphasis on citizen participation. Section 1948.32(d) expresses the policy of the FmHA with regard to this issue, and a determination has been made that no change is necessary. Section 1948.32(g) was expanded to reflect the concern about possible duplication in planning activities. Also, an additional criterion was added to reflect the cost effectiveness of the project (Section 1948.32(i)).

16. A new Exhibit B is added to provide administrative assistance to agency employees.

As added, Subpart A of Part 1948 of Subchapter L reads as follows:

Subpart A—Area Development Assistance Planning Grants

Sec.

AUTHORITY: 7 U.S.C. 1989; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Assistant Secretary for Rural Development, 7 CFR 2.70.

Subpart A—Area Development Assistance Planning Grants

§ 1948.1 General.

This Subpart sets forth the policies and procedures for making grants under Section 306(a)(11) of the Consolidated Farm and Rural Development Act, Area Development Assistance Planning Grants for comprehensive planning for rural development. The Farmers Home Administration (FmHA) will fully consider all A-95 clearinghouse review comments and recommendations in selecting applications for funding. The appropriate vehicle for State Rural Development Committee comments shall be the A-95 review process. Federally recognized Indian Tribes are exempted from the provisions of the Office of Management and Budget (OMB) Circular A-95.

§ 1948.2 [Reserved]

§ 1948.3 Objectives.

The objective of the Area Development Assistance Planning Grant Program is to contribute to the development of comprehensive planning for rural development, especially as such planning affects the unemployed, the underemployed, those with low family incomes, and minorities, by providing grants which will:

(a) Make possible the development of comprehensive planning processes for rural areas;

(b) Enable rural areas which already have plans to revise them and/or fill critical gaps when this is needed to ensure an integrated, usable package;

(c) Support the development of an aspect or aspects of a comprehensive planning process, provided this will make it possible to put the plan into action. The actions should be consistent with other community plans.

§ 1948.4 [Reserved]

§ 1948.5 Definitions.

Terms used in this subpart have the following meanings:

(a) "Clearinghouse" includes:

(1) "State Clearinghouse"—agency of the State Government designated by the Governor or by State law to carry out the requirements of OMB Circular A-95.

(2) "Areawide clearinghouse"—an areawide agency designated by OMB or by the Governor or by State law to carry out the requirements of OMB Circular A-95.

(b) "Comprehensive planning" means a continuing process which develops guides for action which include goals, objectives, priorities, policies, or procedures relating to (1) the provision of community facilities and/or other governmental services, and (2) the effective development and utilization of human and natural resources. Rural comprehensive planning includes but is not limited to: (i) The provision of leadership, coordination, citizen involvement, data collection, and technical analysis; (ii) the determination of planning project effectiveness through continuing evaluation; (iii) the establishment of mechanisms for implementation; and (iv) the provision of opportunities for citizens and governmental units to affect the overall rural development policy-making process.

(c) "Grantee" means an entity with whom FmHA has entered into a grant agreement under this program.

(d) "Rural" and "rural area" shall not include any area in any city or town which has a population in excess of ten thousand inhabitants.

(e) "Rural development policy-making process" means a process of problem and issue identification, evaluation and selection of policy and strategy options, monitoring and assessing effectiveness of strategies, and program implementation which systematically involves relevant Federal, State, and local government agencies, public and consumer interest groups, and the private sector.

(f) "Rural development strategy" means a coordinated set of Federal, State, and local actions targeted to the specific needs of diverse rural areas.

(g) "State" means any of the fifty States, Puerto Rico, or the Virgin Islands.

(h) "Substate district" means a group of contiguous counties or other multijurisdictional areas having common or related social, economic, or physical characteristics indicating a community of developmental interests and which have been formally designated or recognized by the State as an appropriate area for planning. This definition may also include an individual county which has been formally designated or recognized by the state as a substate district.

(i) "Units of general local government" means any county, parish, city, town, township, village, or other general purpose political subdivision of a State, authorized to engage in comprehensive planning by law or State designation.

§ 1948.6 [Reserved]

§ 1948.7 Source of funds.

All grants awarded will be made from appropriated funds specifically allotted for this program.

§ 1948.8-1948.9 [Reserved]

§ 1948.10 Financial support.

(a) Grants will not exceed 75 percent of the total funds required for the planning project. The Grantee's share must equal at least 25 percent of the

total project costs, these costs being met by cash, services, or a combination of both.

(b) Grantees may request subsequent grants for comprehensive planning purposes subject to the criteria contained in these regulations.

§ 1948.11–1948.12 [Reserved]

§ 1948.13 Applicant eligibility.

(a) Organizations eligible for grants include units of general local government, substate district organizations, areawide comprehensive planning agencies, regional and local planning commissions, State governments, Federally or State recognized Indian Tribes or Nations, and public, quasi-public, or private nonprofit organizations as may have authorization to prepare comprehensive plans for rural development or specific aspects of rural development. An applicant must have authority to receive and spend Federal and other funds and to contract for planning purposes. Applicants will furnish FmHA with evidence of legal existence and authority to prepare comprehensive plans for rural development or specific aspects of rural development.

(b) Except for Federally recognized Indian Tribes, an applicant for multi-jurisdictional area planning, if the applicant is other than the areawide comprehensive planning agency designated pursuant to OMB Circular A-95, shall submit an agreement between the applicant and such areawide agency covering the means by which their planning project activities will be coordinated. Such agreement will cover but need not be limited to the following:

(1) Identification of relationships between the planning project activities and the areawide comprehensive planning agency which will require coordination;

(2) The organizational and procedural arrangements for coordinating activities such as common board membership, procedures for joint reviews of projected activities and policies, and information exchange;

(3) Cooperative arrangements for sharing planning resources including funds, personnel, facilities, and services; and

(4) Agreements regarding social, economic, demographic, and environmental base data, statistics, and projections constituting the basis on which planning in the area will proceed.

When the applicant has been unable to develop such an agreement, a statement will be submitted to FmHA indicating what efforts have been made to secure an agreement and issues which have prevented obtaining it. In such case FmHA, in consultation with the State clearinghouse, will undertake to resolve these issues within 30 days of receipt of the application and before approving the application.

§ 1948.14 [Reserved]

§ 1948.15 Comprehensive Planning Projects for Rural Development.

(a) The rural area to be covered in a planning project may be any area where the people have common or closely related problems or interests. The area covered may not include any area in any city or town which has a population of more than ten thousand people.

(b) Planning projects financed with FmHA grants should consider present population distribution, projected population growth or decline, economic conditions and trends of the rural areas concerned, and other area functions which are deemed essential for orderly growth of the rural area involved. The planning projects may include, but need not be limited to, the addressing of rural planning needs in the areas of housing, energy management, community facilities, health, transportation, education, recreation, resource conservation, and the development and/or preservation of land for residential, agricultural, commercial, and industrial uses.

(c) Each planning project should analyze planning alternatives for the rural area. Consideration should be given to the recommendations and services available from local, State, Federal, and private agencies and private individuals.

(1) If the rural area to be covered is in an area covered by a State or regional plan, the plan already developed for the larger area must be carefully considered to avoid conflict or duplication.

(2) Each planning project should be coordinated with other comprehensive or special purpose plans including overall economic development plans and local industrial development plans.

(3) To the fullest extent possible, planning projects should be coordinated with related planning and development activities presently carried out by the areawide A-95 clearinghouse agency.

(d) Planning projects should consider preservation and enhancement of the area's environment and the area's historic value.

§§ 1948.16–1948.17 [Reserved]

§ 1948.18 Grant purposes.

Grant funds may be used for the preparation of comprehensive plans and for comprehensive planning purposes as set forth in the grant agreement, including but not limited to:

(a) Payment of salaries of professional, technical, and clerical staff to carry out rural comprehensive planning and evaluation;

(b) Payment of necessary reasonable office expenses such as office rental, office utilities, and office equipment rental;

(c) Purchase of office supplies;

(d) Payment of necessary reasonable administrative costs, such as workmen's compensation, liability insurance, employer's share of social security, and travel;

(e) Payment of costs to undertake tests or surveys necessary for the planning activity.

§ 1948.19 [Reserved]

§ 1948.20 Ineligible activities.

Grant funds may not be used for:

(a) Acquisition, construction, repair, or rehabilitation of development items, or permanent construction items which may be used in final operation;

(b) Replacement of or substitution for any financial support previously provided or assured from any other source which would result in a reduction of current effort on the part of the applicant;

(c) Duplication of current services;

(d) Routine administrative activities not allowable under Federal Management Circular, FMC 74-4, "Cost Principles Applicable to Grants and Contracts with State and Local Governments"; and

(e) Political activities.

§§ 1948.21–1948.22 [Reserved]

§ 1948.23 Environmental Impact requirements.

The policies and regulations contained in Part 1901, Subpart G, of this Chapter apply to grants made under this part.

§ 1948.24 Historic Preservation requirements.

The policies and regulations contained in Part 1901, Subpart F, of this chapter apply to grants made under this part.

§§ 1948.25–1948.26 [Reserved]

§ 1948.27 Equal Opportunity requirements.

The policies and regulations contained in Part 1901, Subpart E, of this chapter apply to grants made under this part.

§ 1948.28 A-95 and other administrative requirements.

The policies and regulations contained in Chapter 4, Sections 4 and 5 of the USDA Administrative Regulations; Part 1901, Subparts H and J, of this chapter; Treasury Circular No. 1082, Revised; and OMB Circular A-95 apply to grants made under this part.

§ 1948.29 Application procedure.

(a) Except for Federally recognized Indian Tribes, all applicants should

notify the appropriate designated clearinghouse(s) of the intent to submit an application consistent with OMB Circular A-95.

(b) Applicants will file an original and two copies of Form AD-621, "Preapplication for Federal Assistance," with the appropriate FmHA office. This Form is available in all FmHA offices. Counties and other units of general local government will apply through the appropriate FmHA County Office. State, substate district, nonprofit, and Indian applicants will apply through the appropriate FmHA State Office. The FmHA County Office will forward the preapplications with written comments (see Exhibit B) within five working days to the State Office. The FmHA State Office will forward preapplications with written comments (see Exhibit B) within five working days to the Administrator, Farmers Home Administration, Washington, D.C. 20250.

(c) Nonprofit and substate district applicants should submit written concurrence from the county, parish, or township governments affected that the project is beneficial and does not duplicate current activities. Indian nonprofit organizations, however, should obtain the written concurrence of the Tribal governing body in lieu of the concurrence of the County governments.

(d) All preapplications shall be accompanied by:

(1) Evidence of applicant's legal existence;

(2) Evidence of applicant's authority to prepare comprehensive plans for rural development or specific aspects of rural development;

(3) A statement declaring whether multijurisdictional planning is contemplated;

(4) An original and one copy of Form FmHA 449-10, "Applicants Environmental Impact Evaluation;" and

(5) An original and one copy of Forms FmHA 400-1, "Equal Opportunity Agreement," and FmHA 400-4, "Nondiscrimination Agreement." Indian Tribes are exempt from this requirement.

(e) County and State FmHA offices receiving preapplications will:

(1) Determine if the area to be covered by the project is a "rural area" as defined in § 1948.5(d) above.

(2) Complete Form FmHA 440-46, "Environmental Impact Assessment."

(3) Prepare an Historic Preservation assessment in accordance with part 1901, subpart F, of this part.

(4) Prepare written comments reflecting criteria listed in § 1948.32 below.

(f) The FmHA County Office will forward the original and one copy of the preapplication and accompanying documents, including paragraphs (e)(1) through (e)(4) of this section, to the FmHA State Director within 5 working days of receipt of the preapplication.

(g) The FmHA State Director will forward the original preapplication and accompanying documents, including paragraphs (e)(1) through (e)(4) of this section, to the Administrator, FmHA National Office, within 5 working days of receipt of the preapplication.

(h) Upon receipt of a preapplication, the FmHA National Office will:

(1) Review and evaluate the preapplication and accompanying documents; and

(2) Respond to the applicant within 45 days of the date of receipt of the preapplication using Form AD-622, "Notice of Preapplication Review Action," indicating the action taken on the preapplication.

(i) Upon notification on Form AD-622 that the applicant is eligible to compete with other applicants for funding, an application on Form AD-623, "Application for Federal Assistance (Nonconstruction Programs)," may be submitted to the FmHA National Office.

(1) The FmHA National Office will provide Forms AD-623 with instructions to the applicant with Form AD-622; and

(2) The FmHA National Office will send a copy of the applicant's Form AD-621 and relevant documents to the FmHA Regional Office of General Counsel (OGC) requesting a legal determination be made of applicant's legal existence and authority to prepare comprehensive plans for rural development or specific aspects of rural development.

(j) Upon receipt of an application on Form AD-623 by FmHA National Office, a docket shall be prepared which will include the following:

(1) Form AD-621, "Preapplication for Federal Assistance;"

(2) Form AD-622, "Notice of Preapplication Review Action;"

(3) A-95 Clearinghouse comments;

(4) Form AD-623, "Application;"

(5) Evidence of the applicant's legal existence and authority to prepare comprehensive plans for rural development or specific aspects of rural development;

(6) Office of General Counsel legal determination;

(7) Grant Agreement and scope of work;

(8) Form FmHA 440-1, "Request for Obligation of Funds;"

(9) Form FmHA 400-1, "Equal Opportunity Agreement;"

(10) Form FmHA 400-4, "Nondiscrimination Agreement;"

(11) Multijurisdictional Agreement, if required;

(12) Form FmHA 449-10, "Applicant's Environmental Impact Evaluation;" and

(13) Form FmHA 440-46, "Environmental Impact Assessment;"

(14) Historic Preservation Assessment.

§§ 1948.30–1948.31 [Reserved]

§ 1948.32 Grant selection.

The following specific criteria will be considered in the competitive selection of grant recipients:

(a) Current rural development planning needs and priorities of the rural area covered by the application;

(b) How well the applicant proposes to meet objectives of the Area Development Assistance Program (see § 1948.3) and the rural development planning needs and priorities of the rural area concerned;

(c) The extent to which the project will assist the unemployed, the underemployed, those with low family incomes, and minorities;

(d) The extent of citizen participation and involvement in the development of the application and project;

(e) Applicant's demonstrated capability and past performance in administering its programs;

(f) The nature of comments and recommendations from the A-95 clearinghouse;

(g) The extent of planned coordination with other Federal, State, substate, and local planning activities affected by the project and whether the activity proposed under the Area Development Assistance Program will not duplicate any planning activities presently underway.

(h) How well the proposed project will promote an effective rural development strategy.

(i) The extent to which the project will be cost effective, including but not limited to, the ratio of personnel to be hired by the applicant to the cost of the project, the cost per person who will benefit from the project, and the expected benefits to low income and minority individuals from the project.

§§ 1948.33–1948.34 [Reserved]

§ 1948.35 Grant approval and announcement

(a) FmHA National Office will review the docket to determine whether the proposed grant complies with these regulations and that funds are available.

(b) If a grant is not recommended after the docket is developed, FmHA National Office will notify the applicant in writing of the reason for rejection.

(c) If a grant is recommended, Form FmHA 440-1 and the proposed Grant Agreement and scope of work will be prepared and forwarded to the applicant for signature.

(d) When Form FmHA 440-1, and the Grant Agreement and scope of

work are received from the applicant, the docket will be forwarded to the Administrator, FmHA.

(e) Form FmHA 071-1, "Project Information Card," will be prepared and sent to the Director of Information, Farmers Home Administration.

(f) If the Administrator approves the project, the following actions will be taken in the order listed:

(1) The Administrator, FmHA, or his designee, will telephone the Finance Office requesting that grant funds for a particular project be obligated. Immediately after contacting the Finance Office, the requesting official will furnish the requesting office's security identification code. Failure to furnish the security code will result in the rejection of the request of obligation. After the security code is furnished, the required information from Form FmHA 4440-1, "Request for Obligation of Funds," will be furnished to the Finance Office. Upon receipt of the telephone request for obligation of funds, the Finance Office will record all information necessary to process the request for obligation in addition to the date and time of request.

(2) The individual making the request will record the date and time of the request along with his signature in section 39 of Form FmHA 440-1.

(i) The Finance Office will notify the National Office by telephone when funds are reserved and of the date of obligation. If funds cannot be reserved for a project, the Finance Office will notify the National Office that funds are not available. The obligation date will be 6 working days from the date the request for obligation is processed.

(ii) The Finance Office will send Form FmHA 440-57, "Acknowledgement of Obligated Funds/Check Request," to the Administrator, informing him of the reservation of funds with the obligation date inserted as required by Item 9 on the Forms Manual Insert (FMI) for Form FmHA 440-57.

(iii) Form FmHA 440-1 will not be mailed to the Finance Office.

(3) The Administrator, FmHA will notify the Director of Information in the National Office with a recommendation that the project announcement be released.

(4) An executed Form FmHA 440-1 will be sent to the applicant along with an executed copy of the Grant Agreement and scope of work on or before the date funds are obligated.

(i) The actual date of applicant notification will be entered on the original of Form FmHA 440-1 and the original of the Form will be included as a permanent part of the file.

(ii) Standard Form 270, "Request for Advance or Reimbursement," will be sent to the applicant for completion and returned to FmHA.

(5) If it is determined that a project will not be funded or if major changes in the scope of the project are made after release of the approval announcement, the Administrator will notify the Director of Information by telephone giving the reasons for such action. The Director of Information will inform all parties who were notified by the project announcement if the project will not be funded or of major changes in the project, using a procedure similar to the announcement process. Form FmHA 440-10, "Cancellation of Loan or Grant Check and/or Obligation," will not be submitted to the Finance Office until five working days after notifying the Director of Information.

(6) Upon receipt of a properly completed SF 270, Form FmHA 440-57 will be completed and called to the Finance Office.

§ 1948.36-1948.39 [Reserved]

§ 1948.40 Grant closing and fund disbursement.

Closing is the process by which FmHA determines that applicable administrative actions have been completed and the Grant Agreement is signed. The Grant Agreement (Exhibit A) will be executed by the Administrator at the time the initial obligation is made. An executed original of the Grant Agreement and scope of work shall be sent to the Grantee and two copies sent to the appropriate FmHA State Director.

§ 1948.41-1948.42 [Reserved]

§ 1948.43 Grant monitoring.

Each grant will be monitored by FmHA to ensure that the Grantee is complying with the terms of the grant and that the planning project activity is completed as approved. Ordinarily, this will involve a review of quarterly and final reports by FmHA.

§ 1948.44 [Reserved]

§ 1948.45 Reporting requirements.

Standard Form 270, "Request for Advance of Reimbursement," shall be submitted by Grantees on an as needed basis but not more frequently than once every 30 days. Standard Form 269, "Financial Status Report," and a project performance activity report will be required of all Grantees on a quarterly basis. SF 269, and a final project performance report will also be required. These final reports may serve as the last quarterly reports. Grantees shall constantly monitor performance to ensure that time schedules are being met, projected work by time periods is being accomplished, and other performance objectives are being achieved. All Grantees should submit an original of each report to FmHA National Office and two copies to the appropriate FmHA State Office. The project performance reports shall include, but need not be limited to the following:

(a) A comparison of actual accomplishments to the objectives established for that period;

(b) Reasons why established objectives were not met;

(c) Problems delays, or adverse conditions which will materially affect attainment of planning project objectives, prevent the meeting of time schedules or objectives, or preclude the attainment of project work elements during established tome periods; this disclosure shall be accompanied by a statement of the action taken or contemplated and any Federal assistance needed to resolve the situation; and

(d) Objectives established for the next reporting period.

§ 1948.46 [Reserved]

§ 1948.47 Grant Agreement.

(a) Exhibit A of this subpart is a Grant Agreement which sets forth the procedures for making and servicing Area Development Assistance Planning Grants.

(b) Exhibit B of this subpart contains an Applicant Checklist and administrative instructions for FmHA State and County Offices.

§§ 1948.48-1948.50 [Reserved]

EXHIBIT A—GRANT AGREEMENT COMPREHENSIVE PLANNING FOR RURAL DEVELOPMENT

This Agreement is between ——— (name), ——— (address), (Grantee) and the United States of America acting through the Farmers Home Administration (Grantor or FmHA). Grantee has determined to undertake certain comprehensive planning at an estimated cost of $——— and has duly authorized such planning. Grantee shall finance $——— of the costs through cash and in-kihd contributions. The Grantor agrees to grant to Grantee a sum not to exceed $——— subject to the terms and conditions established by the Grantor; provided, however, that the proportionate share of any grant funds actually advanced and not needed for grant purposes shall be returned immediately to the Grantor. The Grantor may terminate the grant in whole, or in part, at any time before the date of completion, whenever it is determined that the Grantee has failed to comply with the conditions of the grant. In consideration of said grant by Grantor to Grantee, to be made pursuant to Section 306(a)(11) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)(11)) for the purpose only of defraying a part of the planning costs as permitted by applicable Farmers Home Administration regulations:

PART A

Grantor and Grantee agree:

(Sec. 6 (84 Stat. 1593; 29 U.S.C. 655); Secretary of Labor's Order No. 8-76 (41 FR 25059); 29 CFR Part 1911.)

EULA BINGHAM
Assistant Secretary of Labor.

[FR Doc. 78-9021 Filed 4-3-78; 8:45 am]

1. This agreement shall be effective when executed by both parties.

2. The scope of work set out below shall be completed within —— days from the date of this agreement.

3. (a) The ratio of Federal and non-Federal contributions to the total budget is —— percent and —— percent, respectively. The same ratio will be used to establish the Federal and non-Federal share of allowable project cost, as determined by the Grantor, in accordance with provisions of FmHA regulations, the total of which costs will not exceed the grant total amounts shown in the approved budget. In no event will the grants exceed $—— or 75 percent of the total eligible costs of the Grantee whichever is the lesser. Use of grant funds for travel which is determined as being necessary to the program for which the grant is established may be subject to the travel policies of the Grantee institution if they are uniformly applied regardless of the source of funds in determining the amounts and types of reimbursable travel expenses of Grantee staff and consultants. Where the Grantee institution does not have such specific policies uniformly applied, the Federal Travel Regulations shall apply in determining the amount charged to the grant. Grantee may purchase furniture and office equipment only if specifically approved in the scope of work. Approval will be given only when Grantee demonstrates that purchase is necessary and would result in less cost to the Government in providing Federal-share funds or to the Grantee in providing its contributions. Commercial purchase under these circumstances will be approved only after consideration of Federal supply sources.

(b) Expenses and Purchases Excluded:

(i) In no event shall the Grantee expend or request reimbursement from Federal-share funds for obligations entered into or for costs incurred or accrued prior to the effective date of this grant.

(ii) Funds budgeted under this grant may not be used for entertainment expenses.

(iii) Funds budgeted under this grant may not be used to pay for capital assets, the purchase of real estate or vehicles, improvement and renovation of space, and repair and maintenance of privately-owned vehicles.

(c) Grant funds shall not be used to replace any financial support previously provided or assured from any other source. The Grantee agrees that the general level of expenditure by the Grantee for the benefit of program area and/or program covered by this agreement shall be maintained and not reduced as a result of the Federal share funds received under this grant.

4. (a) In accordance with Treasury Circular 1075, grant funds will be disbursed by the FmHA as cash advances on an as needed basis not to exceed one advance every 30 days. The financial management system of the recipient organization shall provide for effective control over and accountability for all Federal funds as stated in OMB Circular A-102 revised for State and local governments and OMB Circular A-110 for nonprofit organizations.

(b) Cash advances to the Grantee shall be limited to the minimum amounts needed and shall be timed to be in accord only with the actual, immediate cash requirements of the Grantee in carrying out the purpose of the planning project.

(c) The timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursements by the recipient organization for direct program costs.

(d) Federal funds should be promptly refunded to the FmHA and redrawn when needed if the funds are erroneously drawn in excess of immediate disbursement needs. The only exceptions to the requirement for prompt refunding are when the funds involved:

(i) will be disbursed by the recipient organization within seven calendar days, or

(ii) are less than $10,000 and will be disbursed within 30 calendar days.

(e) Grantee shall provide satisfactory evidence to FmHA that all officers of Grantee organization authorized to receive and/or disburse Federal funds are covered by such bonding and/or insurance requirements as are normally required by the Grantee.

(f) Where the Grantee shall have claimed credit for contributions-in-kind to the total cost of allowable expenses, the evaluation of such contributions-in-kind shall be subject to reevaluation by the Grantor at any time, and any deficiency so determined by the Grantor shall be compensated by supplemental contributions by the Grantee as a condition for further disbursements by the Grantor. Specific procedures for establishing the value of in-kind contributions from third parties established in OMB Circular A-102 will govern such an evaluation. Principles for determining cost are set forth in FMC 74-4 and will be used in cost evaluation.

(g) Grant funds will be placed in a bank account(s). If for any reason grant funds are invested, income earned on such investments shall be identified as interest income on grant funds and forwarded to the Finance Office, FmHA, St. Louis, Missouri, unless the Grantee is a State. "State" includes instrumentalities of a State but not political subdivisions of a State. A State Grantee is not accountable for interest earned on grant funds.

5. The Grantee will submit Performance and Financial reports as indicated below:

(a) As needed, but not more frequently than once every 30 days, an original and 2 copies of Standard Form 270, "Request for Advance or Reimbursement;"

(b) Quarterly, an original and 2 copies of Standard Form 269, "Financial Status Report," and a Project Performance report according to the schedule below: Period ——; Date Due ——.

(c) Final, an original and 2 copies of Standard Form 269, "Financial Status Report," and a Project Performance report according to the schedule below:

Period Due Date

NOTE.—Final reports may serve as the last quarterly reports.

(d) The original copies of reports and forms are to be submitted to the Administrator, Farmers Home Administration, Washington, D.C. 20250. The two copies of reports should be submitted to the appropriate FmHA State Office.

6. The budget covered by this agreement is:

(a) Federal contribution ..... $ .....
Grantee contribution:
Cash ....
In-kind ....
Total ....

(b)

Budget Categories	Federal Funds	Non-Federal Share		Total
		Cash	In-kind	
Direct Charges:				
1. Personnel	$	$		$
2. Fringe Benefits				
3. Travel				
4. Equipment				
5. Supplies				
6. Contractual				
7. Other				
Total Direct Charges	$	$		$
8. Indirect Charges				
Totals	$	$		$

(c) In accordance with FMC 74-4, Attachment B, compensation for employees will be considered reasonable to the extent that such compensation is consistent with that paid for similar work in other activities of the State or local government.

(d) In accordance with OMB Circular A-102, Attachment K, transfers among direct cost budget categories of more than 5 percent of the total budget must have prior written approval by the Administrator, Farmers Home Administration.

7. (a) The scope of work is described in the attached exhibit 1. The Grantee accepts responsibility for establishing a development process which will expand the capacity of citizens to improve local conditions and alleviate problems associated with unemployment, underemployment, those with low family incomes, and minorities in the Grantee area. The Grantee shall:

(i) Endeavor to coordinate and provide liaison with State development organizations, where they exist.

(ii) Provide continuing information to FmHA on the status of Grantee programs, projects, related activities, and problems.

(iii) Contribute to a national rural development policy-making process.

(iv) Contribute to development of a national rural development strategy.

(b) The Grantee shall inform the Grantor as soon as the following types of conditions become known:

(i) Problems, delays, or adverse conditions which materially affect the ability to attain program objectives, prevent the meeting of time schedules or goals, or preclude the at-

tainment of project work units by established time periods. This disclosure shall be accompanied by a statement of the action taken or contemplated, and any Grantor assistance needed to resolve the situation.

(ii) Favorable developments or events which enable meeting time schedules and goals sooner than anticipated or producing more work units than originally projected.

PART B

Grantee agrees: 1. To comply with property management standards established by Attachment N of OMB Circular A-102 for expendable and nonexpendable personal property. "Personal property" means property of any kind except real property. It may be tangible—having physical existence—or intangible—having no physical existence, such as patents, inventions, and copyrights. "Nonexpendable personal property" means tangible personal property having a useful life of more than one year and an acquisition cost of $300 or more per unit. A Grantee may use its own definition of nonexpendable personal property: *Provided*, That such definition would at least include all tangible personal property as defined above. "Expendable personal property" refers to all tangible personal property other than nonexpendable property. When nonexpendable tangible property is acquired by a Grantee with project funds, title shall not be taken by the Federal Government but shall vest in the Grantee subject to the following conditions:

(a) Right to transfer title. For items of nonexpendable personal property having a unit acquisition cost of $1,000 or more, FmHA may reserve the right to transfer the title to the Federal Government or to a third party named by the Federal Government when such third party is otherwise eligible under existing statutes. Such reservation shall be subject to the following standards:

(1) The property shall be appropriately identified in the grant or otherwise made known to the Grantee in writing.

(2) FmHA shall issue disposition instructions within 120 calendar days after the end of the Federal support of the project for which it was acquired. If FmHA fails to issue disposition instructions within the 120 calendar day period, the Grantee shall apply the standards of paragraph (4) below.

(3) When FmHA exercises its right to take title, the personal property shall be subject to the provisions for federally owned nonexpendable property discussed in paragraph (4), below.

(4) When title is transferred either to the Federal Government or to a third party and the Grantee is instructed to ship the property elsewhere, the Grantee shall be reimbursed by the benefiting Federal agency with an amount which is computed by applying the percentage of the Grantee participation in the cost of the original grant project or program to the current fair market value of the property, plus any reasonable shipping or interim storage costs incurred.

(b) Use of other tangible nonexpendable property for which the Grantee has title.

(1) The Grantee shall use the property in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When it is no longer needed for the original project or program, the Grantee shall use the property in connection with its other Federally sponsored activities, in the following order of priority:

(a) Activities sponsored by FmHA.

(b) Activities sponsored by other Federal agencies.

(2) Shared use. During the time that nonexpendable personal property is held for use on the project or program for which it was acquired, the Grantee shall make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the property was originally acquired. First preference for such other use shall be given to other projects or programs sponsored by FmHA; second preference shall be given to projects or programs sponsored by other Federal agencies. If the property is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible if authorized by FmHA. User charges should be considered if appropriate.

(c) Disposition of other nonexpendable property. When the Grantee no longer needs the property as provided in 1(a)(4) above, the property may be used for other activities in accordance with the following standards:

(1) Nonexpendable property with a unit acquisition cost of less than $1,000. The Grantee may use the property for other activities without reimbursement to the Federal Government or sell the property and retain the proceeds.

(2) Nonexpendable personal property with a unit acquisition cost of $1,000 or more. The Grantee may retain the property for other use provided that compensation is made to FmHA or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the property. If the Grantee has no need for the property and the property has further use value, the Grantee shall request disposition instructions from the original Grantor agency.

FmHA shall determine whether the property can be used to meet the agency's requirements. If no requirement exists within that agency, the availability of the property shall be reported, in accordance with the guidelines of the Federal Property Management Regulations (FPMR), to the General Services Administration by FmHA to determine whether a requirement for the property exists in other Federal agencies. FmHA shall issue instructions to the Grantee no later than 120 days after the Grantee request and the following procedures shall govern:

(a) If so instructed or if disposition instructions are not issued within 120 calendar days after the Grantee's request, the Grantee shall sell the property and reimburse FmHA an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the Grantee shall be permitted to deduct and retain from the Federal share $100 or ten percent of the proceeds, whichever is greater, for the Grantee's selling and handling expenses.

(b) If the Grantee is instructed to dispose of the property other than as described in 1(a)(4) above, the Grantee shall be reimbursed by FmHA for such costs incurred in its disposition.

(c) Property management standards for nonexpendable property. The Grantee's property management standards for nonexpendable personal property shall include the following procedural requirements:

(1) Property records shall be maintained accurately and shall include:

(a) A description of the property.

(b) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.

(c) Sources of the property including grant or other agreement number.

(d) Whether title vests in the Grantee or the Federal Government.

(e) Acquisition date (or date received, if the property was furnished by the Federal Government) and cost.

(f) Percentage (at the end of the budget year) of Federal participation in the cost of the project or program for which the property was acquired. (Not applicable to property furnished by the Federal Government.)

(g) Location, use and condition of the property and the date the information was reported.

(h) Unit acquisition cost.

(i) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a Grantee compensates the Federal agency for its share.

(2) Property owned by the Federal Government must be marked to indicate Federal ownership.

(3) A physical inventory of property shall be taken and the results reconciled with the property records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The Grantee shall, in connection with the inventory, verify the existence, current utilization, and continued need for the property.

(4) A control system shall be in effect to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft of nonexpendable property shall be investigated and fully documented; if the property was owned by the Federal Government, the Grantee shall promptly notify FmHA.

(5) Adequate maintenance procedures shall be implemented to keep the property in good condition.

(6) Where the Grantee is authorized or required to sell the property, proper sales procedures shall be established which would provide for competition to the extent practicable and result in the highest possible return.

(7) Expendable personal property shall vest in the Grantee upon acquisition. If there is a residual inventory of such property exceeding $1,000 in total aggregate fair market value, upon termination or completion of the grant and if the property is not needed for any other federally sponsored project or program, the Grantee shall retain the property for use on nonfederally sponsored activities, or sell it, but must in either case compensate the Federal Government for its share. The amount of compensation shall be computed in the same manner as nonexpendable personal property.

2. To provide Financial Management Systems which will include:

(a) Accurate, current, and complete disclosure of the financial results of each grant. Financial Reporting will be on an accrual basis.

(b) Records which identify adequately the source and application of funds for grant-supported activities. Those records shall contain information pertaining to grant

awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

(c) Effective control over and accountability for all funds, property and other assets. Grantees shall adequately safeguard all such assets and shall assure that they are used solely for authorized purposes.

(d) Accounting records supported by source documentation.

3. To retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least three years after grant closing except that the records shall be retained beyond the three-year period if audit findings have not been resolved. Microfilm copies may be subsititued in lieu of original records. The Grantor and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Grantee which are pertinent to the specific grant program for the purpose of making audit, examination, excerpts, and transcripts.

4. To provide information as requested by the Grantor to determine the need for and complete any necessary Environmental Impact Statements.

5. To provide information as requested by the Grantor concerning the Grantee's actions in soliciting citizen participation in the application process, including published notice of public meetings, actual public meetings held, and content of written comments received.

6. To account for and to return to Grantor interest earned on grant funds pending their disbursement for program purposes unless the Grantee is a State. See Part A 4.(g) above.

7. Not to encumber, transfer, or dispose of the property of any part thereof, furnished by the Grantor or acquired wholly or in part with Grantor Funds without the written consent of the Grantor except as provided in Part B 1.

8. To provide Grantor with such periodic reports as it may require of Grantee operations by designated representative of the Grantor.

9. To execute Form FmHA 400-1, "Equal Opportunity Agreement," and to execute any other agreements required by Grantor to implement the civil rights requirement.

10. To include in all contracts in excess of $100,000 a provision for compliance with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act of 1970. Violations shall be reported to the Grantor and the Regional Office of the Environmental Protection Agency.

11. That, upon any default under its representations or agreements set forth in this instrument, Grantee, at the option and demand of Grantor, will, to the extent legally permissible, repay to the Grantor forthwith the original principal amount of the grant stated herein above, with interest at the rate of five percentum per annum from the date of the default. The provisions of this Grant Agreement may be enforced by Grantor, at its option and without regard to prior waivers by it of previous defaults of Grantee, by judicial proceedings to require specific performance of the terms of this Grant Agreement or by such other proceedings in law or equity, in either Federal or State courts, as may be deemed necessary by Grantor to assure compliance with the provisions of this Grant Agreement and the laws and regulations under which this grant is made.

12. That no member of Congress shall be admitted to any share or part of this Grant or any benefit that may arise therefrom; but this provision shall not be construed to bar as a contractor under the Grant a publicly held corporation whose ownership might include a member of Congress.

13. That all non-confidential information resulting from its activities shall be made available to the general public on an equal basis.

14. That the purpose and scope of work for which this grant is made shall not duplicate programs for which monies have been received, are committed, or are applied for from other sources, public and private.

15. That the Grantee shall relinquish any and all copyrights and/or privileges to the materials developed under this grant, such material being the sole property of the Federal Government. In the event anything developed under this grant is published in whole or in part, the material shall contain notice and be identified by language to the following effect: "The material is the result of tax-supported research and as such is not copyrightable. It may be freely reprinted with the customary crediting of the source."

16. That the Grantee shall abide by the policies promulgated in OMB Circular A-102, Attachment 0, which provides standards for use by Grantees in establishing procedures for the procurement of supplies, equipment, and other services with Federal grant funds.

17. To the following termination provisions:

(a) Termination for cause. The Grantor agency may terminate any grant in whole, or in part, at any time before the date of completion, whenever it is determined that the Grantee has failed to comply with the conditions of the grant. The Grantor agency shall promptly notify the Grantee in writing of the determination and the reasons for the termination, together with the effective date.

(b) Termination for convenience. The Grantor agency or Grantee may terminate grants in whole, or in part, when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in case of partial terminations, the portion to be terminated. The Grantee shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The Grantor agency shall allow full credit to the Grantee for the Federal share of the noncancelable obligations, properly incurred by the Grantee prior to termination.

PART C

Grantor agrees: 1. That it will assist Grantee, within available appropriations, with such technical assistance as Grantor deems appropriate in planning the project and coordinating the plan with local officials comprehensive plans and with any State or area plans for the area in which the project is located.

2. That at its sole discretion, Grantor may at any time give any consent, deferment subordination, release, satisfaction, or termination of any or all of Grantee's grant obligations, with or without valuable consideration, upon such terms and conditions as Grantor may detemine to be (a) advisable to further the purposes of the grant or to protect Grantor's financial interest therein, and (b) consistent with both the statutory purposes of the grant and the limitations of the statutory authority under which it is made.

This agreement is subject to current Grantor regulations and any future regulations not inconsistent with the express terms hereof.

Grantee on ————, 19—, has caused this agreement to be executed by its duly authorized ———— and attested and its corporate seal affixed by its duly authorized ————.

Attest:

Grantee: ————,
By ———— (Title);
By ———— (Title).

Grantor: United States of America, Farmers Home Administration,
By ————, ————
(Title).

EXHIBIT B—APPLICANT'S PREAPPLICATION CHECK-LIST, AREA DEVELOPMENT ASSISTANCE PLANNING GRANTS

I. Applicants should obtain the following forms from the County or State Farmers Home Administration office serving their area:

—3 copies of Form AD-621, "Preapplication for Federal Assistance"
—2 copies of Form FmHA 400-1, "Equal Opportunity Agreement"
—2 copies of Form FmHA 400-4, "Nondiscrimination Agreement"
—2 copies of Form FmHA 449-10, "Applicant's Environmental Impact Evaluation"

II. Instructions for completing AD-621:

PAGE 1, SECTION 1—APPLICANT/RECIPIENT DATA

—Complete Items 1 through 21, except 15 and 19 which are not applicable
—Item 6 a and b should read: 10.826, Area Development Assistance Planning Grants

SECTION II—CERTIFICATION

—Complete Items 22 and 23
—Item 22b—Include names of A-95 Clearinghouses that have been notified in accordance with 1948.29(a)
—Page 5, Part II—Answer all questions
—Page 5, Part III—Complete all apropriate lines
—Page 6, Part IV—Complete program narrative according to instructions and FmHA program regulations 1948.32(a) through 1948.32(i)
—Nonprofit and substate districts—Include written concurrence from the county, parish, or township government(s) affected that the project is beneficial and does not duplicate current activities
—Indian nonprofit organizations on reservations—Include written concurrence of the Tribal governing body
—All Applicants—Include in the narrative section a statement regarding whether multijurisdictional planning is contemplated

III. County and Local Governments submit the following to the FmHA County office serving the area. All other applicants submit the following to the appropriate State FmHA office:

—Completed AD-621 (3 copies) and appropriate documentation as described above
—Executed Form FmHA 400-1 (2 copies)
—Executed Form FmHA 400-4 (2 copies)
—Copy of the charter and by-laws or other evidence of legal existence of the applicant
—Evidence of applicant's authority to prepare comprehensive plans for rural development or a specific aspect of rural development (may be contained in the charter)

ADMINISTRATIVE INSTRUCTIONS FOR FmHA STATE OFFICES REGARDING THEIR RESPONSIBILITIES IN THE ADMINISTRATION OF THE AREA DEVELOPMENT ASSISTANCE PLANNING GRANT PROGRAM

The FmHA State office will maintain for distribution to potential applicants, upon request, a supply of Form AD-621, "Preapplication for Federal Assistance," Form FmHA 449-10, "Applicant's Environmental Impact Evaluation," Form FmHA 400-4, "Nondiscrimination Agreement," and Form FmHA 400-1, "Equal Opportunity Agreement." The State office will also supply to the potential applicant the attached applicant check-list so the potential applicant can be assured of returning a completed preapplication with all necessary accompanying documents. The State office should inform all potential applicants, except recognized Indian Tribes and Nations, at the time they pick up forms, that they should send a copy of the completed preapplication or otherwise notify the appropriate A-95 Clearinghouse of their intent to apply for an Area Development Assistance Planning Grant. The State office will provide any necessary assistance in completing preapplication forms which they distribute.

State, substate district, nonprofit, and Indian applicants will submit preapplications to FmHA State offices. (Units of local general government will submit preapplications to FmHA County offices.)

Upon receipt of the preapplication package the State Director will review the applicant check-list to ensure that the preapplication is complete. After ensuring the preapplication is complete, the State Director will complete Form FmHA 440-46, "Environmental Impact Assessment", and attach it to the preapplication.

The State Director receiving a preapplication that may have an effect on Historical and Archeological (HA) properties will take actions in accordance with CFR Part 1901, Subpart F § 1901.255.

The State Director will examine the preapplication and determine if the area to be covered by the project is a "rural area" as defined by § 1948.5(d) of FmHA regulations. The State Director will include this determination in his comments.

The FmHA State Director will provide written comments to be attached to the preapplications. These comments will, at a minimum, address the following items:

1. Assessment of the need for the proposed activity.
2. Appropriateness and applicability of the proposal for FmHA program funds.
3. Extent of citizen involvement in development of preapplication, particularly the involvement of minority and/or low income groups.
4. How well the proposed project will promote an effective rural development strategy.
5. How well the applicant proposes to meet objectives of the program and the rural development planning needs and priorities of the rural area concerned.
6. The applicant's demonstrated capability and past performance in administering its programs.
7. The extent of planned coordination with other Federal, State, substate, and local planning activities affected by the project.

The FmHA State Director will forward the original Form AD-621 and accompanying documents within five working days to the FmHA National Office.

For applications from units of local general government, the FmHA State Director will receive an original and one copy of Form AD-621, "Preapplication for Federal Assistance" and accompanying documents in the preapplication package from the county office.

The FmHA State Director will:

1. Review each preapplication package for completeness.
2. Review county office comments about the preapplication. State Director comments are optional.
3. Make a determination on Form FmHA 440-46, "Environmental Impact Assessment," in accordance with CFR Part 1901, Subpart G, § 1901.35.
4. Prepare Historical and Archeological (HA) assessment in accordance with CFR, Part 1901.255 (b) and (c).
5. Forward the original AD-621 and accompanying documents within five working days to the FmHA National Office.

The "Notice of Preapplication Review Action" (Form AD-622) will be mailed directly from the FmHA National Office to the applicant. The State office will receive two copies. One copy will be sent to the appropriate county office at the option of the State office.

Those applicants invited to prepare applications will submit the original Form AD-623, "Application for Federal Assistance (Nonconstruction Programs)" directly to the FmHA National Office and two copies to the State Director for distribution as appropriate.

The FmHA National Office will send to the appropriate FmHA State Director two copies of the grant agreement for all applications funded. The State Director will distribute as appropriate.

The State Director will provide assistance in monitoring of grantees as requested by the FmHA National Office. Copies of all information pertinent to the Area Development Assistance Program will be sent to the State Office for distribution within the State as appropriate.

INSTRUCTIONS FOR FmHA COUNTY OFFICES REGARDING THEIR RESPONSIBILITIES IN THE ADMINISTRATION OF THE AREA DEVELOPMENT ASSISTANCE PLANNING GRANT PROGRAM

The FmHA County office will maintain for distribution to potential applicants, upon request, a supply of Forms AD-621, "Preapplication for Federal Assistance," Form FmHA 449-10, "Applicant's Environmental Impact Evaluation," Form FmHA 400-4, "Nondiscrimination Agreement," and Form FmHA 400-1, "Equal Opportunity Agreement." The County office will also supply to the potential applicant the attached applicant check-list so the potential applicant can be assured of returning a completed preapplication with all necessary accompanying documents. The County office should inform all potential applicants, except recognized Indian Tribes and Nations, at the time they pick up forms, that they should send a copy of the completed preapplication or otherwise notify the appropriate A-95 Clearinghouse of their intent to apply for an Area Development Assistance Planning Grant. County Supervisors will provide any necessary assistance in completing preapplication forms which they distribute.

Units of general local government will submit preapplications to the FmHA County offices; all other applicants will submit preapplications to the appropriate State FmHA office. Upon receipt of the preapplication forms the County Supervisors will go over the applicant check-list to ensure that the preapplication is complete. After ensuring the preapplication is complete, the County Supervisor will complete Form FmHA 440-46, "Environmental Impact Assessment," and attach it to the preapplication.

The County Supervisor receiving a preapplication that may have an effect on Historical and Archeological (HA) properties will take the following actions in accord with CFR Part 1901, Subpart F § 1901.255:

A. Review State supplements issued by the State Director pursuant to § 1901.262(a) to determine whether there are any properties within the project area that appear in the National Register.

B. Document the following:

1. A brief narrative report of the findings and conclusions of an on-site reconnaissance of the project area.
2. Any "in-house" knowledge of known HA sites in the project area.

C. Submit the information from (B) above to the appropriate FmHA State Director as part of the preapplication.

The County Supervisor will examine the preapplication and determine if the area to be covered by the project is a "rural area" as defined by § 1948.5(d) of FmHA regulations. The County Supervisor will attach this determination to the preapplication.

The County Supervisor will provide written comments to be attached to the preapplication. These comments will, at a minimum, address the following items:

1. Knowledge of the applicant's past history.
2. Assessment of the need for the proposed activity.
3. Appropriateness and applicability of this proposal for FmHA implementation funds.
4. Extent of citizen involvement in development of preapplication, particularly the involvement of minority and/or low income groups.

The County office will forward the original and one copy of the preapplication and accompanying documents to the State Director within five working days of receipt of the preapplication.

The "Notice of Preapplication Review Action" (Form AD-622) will be mailed directly from the FmHA National Office to the applicant. The County office will receive a copy from the appropriate State Office.

Those applicants invited to submit applications will submit their applications directly to the FmHA National Office with two copies submitted to the County office. The County office will retain one copy for its files and forward the other copy to the appropriate State office.

The County Supervisor will provide assistance in monitoring of grantees as requested by the State Director.

NOTE.—The Farmers Home Administration has determined that this document does not contain a major proposal requiring preparation of an economic impact statement under Executive Order 11821 and OMB Circular A-107.

Dated: March 29, 1978.

GORDON CAVANAUGH,
Administrator,
Farmers Home Administration.

[FR Doc. 78-8804 Filed 4-3-78; 8:45 am]

federal register

TUESDAY, APRIL 4, 1978
PART IV

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

■

Grants to State Agencies for Programs to Meet the Special Educational Needs of Children in Institutions for Neglected or Delinquent Children

[4110-02]

Title 45—Public Welfare

CHAPTER I—OFFICE OF EDUCATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 116c—GRANTS TO STATE AGENCIES FOR PROGRAMS TO MEET THE SPECIAL EDUCATIONAL NEEDS OF CHILDREN IN INSTITUTIONS FOR NEGLECTED OR DELINQUENT CHILDREN

AGENCY: Office of Education, HEW.

ACTION: Final regulation.

SUMMARY: This final regulation is required by section 503 of the Education Amendments of 1972. It establishes the rules governing the award of grants to State agencies which are directly responsible for providing free public education for children in institutions for neglected or delinquent children or in adult correctional institutions. This regulation also provides guidance relating to the allocation, distribution, and use of these grant funds.

EFFECTIVE DATE: Under section 431(d) of the General Education Provisions Act, as amended (20 U.S.C. 1232(d)), this regulation has been transmitted to the Congress concurrently with its publication in the FEDERAL REGISTER. Section 431(d) provides that regulations subject thereto shall become effective on the 45th day following the date of such transmission subject to the provisions therein concerning Congressional action and adjournment.

FOR FURTHER INFORMATION CONTACT:

Pat O. Mancini, Division of Education for the Disadvantaged, telephone: 202-245-2682.

SUPPLEMENTARY INFORMATION:

BACKGROUND

A notice of proposed rulemaking was published in the FEDERAL REGISTER on October 22, 1975, that proposed to amend title 45 of the Code of Federal Regulations by adding a new part 116c to govern the program authorized by section 123 of title I of the Elementary and Secondary Education Act, as amended by Pub. L. 93-380, ("Education Amendments of 1974") (20 U.S.C. 241c-3). An interim final regulation was published in the FEDERAL REGISTER on April 12, 1977, which included a discussion of the comments received in response to the notice of proposed rulemaking. Because the interim regulation contained substantial changes from the notice of proposed rulemaking, comments were again invited.

As recently reorganized, part 116 (published in the FEDERAL REGISTER on September 28, 1976) contains provisions applicable to all title I programs. Therefore, Part 116, Part 116c, and the applicable provisions of 45 CFR Parts 100, 100b, and 100c, the Office of Education General Provisions Regulations, constitute all the regulations governing Title I programs conducted by State agencies for children in institutions for neglected or delinquent children.

SECTION 503 PROCEDURES AND EFFECT

Section 503 of the Education Amendments of 1972 requires the Commissioner to study all rules, regulations, guidelines, or other published interpretations or orders issued by him or the Secretary after June 30, 1965, in connection with, or affecting, the administration of Office of Education programs; to report to the Committee on Labor and Public Welfare of the Senate and the Committee on Education and Labor of the House of Representatives concerning such study; and to publish in the FEDERAL REGISTER such rules, regulations, guidelines, interpretations, and orders with an opportunity for public hearings on the matters so published. This regulation reflects the results of this study as it pertains to programs authorized by section 123 of Title I of the Elementary and Secondary Education Act, as amended. At the present time there are no guidelines relating to Part 116c.

CITATIONS OF LEGAL AUTHORITY

As required by section 431(a) of the General Education Provisions Act (20 U.S.C. 1232(a)), as amended by section 405 of Pub. L. 94-482, and section 503 of the Education Amendments of 1972, a citation of statutory or other legal authority for each section of the regulation has been placed in parentheses on the line following the text of the section.

SUMMARY OF COMMENTS AND RESPONSES

The following is a summary of comments received on the interim regulation. Each comment is followed by a response which indicates either a change from the interim regulation or the reason why no change was considered necessary. Specific comments are arranged in the order of the sections of the interim regulation to which they pertain.

§ *116c.2 Definitions*

Comment. As provided in the interim regulation, an "institution for delinquent children" and an "institution for neglected children" were defined, in part, as "a facility which is operated for the care of children who are in the custody of a public agency as a result of a finding under State law" of either delinquency or neglect. One commenter objected to the use of the word "finding" in these definitions. This commenter noted that section 123(a) of the statute refers only to "children *in* institutions for neglected or delinquent children" (emphasis added), and urged that institutions serving children not yet finally adjudicated as being either neglected or delinquent, be included within the definition. In addition this commenter urged that the definition of an "institution for delinquent children" be modified to include children found under State law to be in need of treatment or supervision (the so-called "status offenders"), whether or not they have been charged with a violation of State law.

Response. A change is made in the regulation. In interpreting the statutory expression, the definitions in the interim regulation were not intended to exclude institutions serving children determined to be neglected or delinquent under State law, but not yet finally adjudicated. Section 123 is broad enough to embrace institutions which serve such children. However, while the statute and this regulation provide this flexibility, they do require that the placement of children in one of these institutions be on the basis of a determination, final or not, that they are either neglected or delinquent under State law.

To avoid possible confusion created by the use of the word "finding," it has been replaced in the final regulation by the word "determination." In addition the phrase "after being charged with a violation of State law" has been deleted from the definition of an "institution for delinquent children." Therefore, the definition includes institutions caring for children in the custody of a public agency as a result of a determination under State law that they are in need of treatment or supervision, whether or not they have been charged with a violation of State law.

Comment. One commenter objected to the definitions of an "institution for neglected children" and an "institution for delinquent children" to the extent they both require "an average length of stay (for the children assigned there) of at least 30 days," and suggested there should be no minimum stay requirement.

Response. No change has been made in the regulation. Section 123(b) provides that the average daily attendance at schools for children in neglected or delinquent institutions is "determined by the Commissioner." The Commissioner has exercised this authority by establishing, in effect, a minimally restrictive rule relating to the calculation of average daily attendance. Stated simply, the rule is that no child's attendance at a school sup-

ported by the State agency may be counted in average daily attendance unless that child is assigned to an institution which has an average length of stay of at least 30 days.

In addition, the supplemental nature of Title I requires that the Commissioner be able to specify the minimum level of State-supported education that may be supplemented with Title I funds. It is unlikely that Title I can effectively supplement a State-supported educational program for children in institutions in which the average length of stay is less than 30 days.

§ 116c.3 Grants Which a State Agency Is Eligible To Receive

Comment. One commenter objected to the prohibition against counting in average daily attendance for this part any child who is counted in average daily attendance under Part 116b (State Operated Programs for Handicapped Children). The commenter proposed that institutionalized handicapped children be counted under both parts, provided that Title I does not pay for more than 100 percent of the cost for supplemental services to these children.

Response. No change is made in the regulation. With respect to State-operated programs for handicapped children, section 121(b) of the Title I statute requires the Commissioner to compute average daily attendance on the basis of the number of children "at *schools* for handicapped children operated or supported by the State agency" (emphasis added). Similarly, section 123(b) requires the commissioner to compute average daily attendance according to "the number of such children in * * * attendance * * * at *schools* for (children in State institutions for neglected or delinquent children) operated or supported by (the State) agency" (emphasis added). Therefore, while it is certainly possible for individual children to be, for example, both handicapped and institutionalized as a neglected child, the Title I statute directs the Commissioner to focus (in computing average daily attendance) not on the attributes of the child but on the type of school he or she attends. If the child attends a school for handicapped children, he or she will be counted and served under section 121; if he or she attends a school for children in State institutions for neglected or delinquent children, the child will be counted and served under section 123.

§ 116c.5 Determination of Average Daily Attendance

Comment. Section 116c.5(a)(3) provides that to be counted in average daily attendance, and therefore eligible to be served by Title I, a child must be participating in an organized program of instruction for at least five hours per week. One commenter stated that attendance for five hours per week was inadequate and suggested as an alternative the same number of hours of instruction per week mandated by State law for children in public elementary and secondary schools. Another commenter stated that, to the contrary, five hours per week was too high and suggested as an alternative the child's participation in three educational sessions of any length, per week.

Response. No change has been made in the regulation. No uniform view exists among the States as to what constitutes a free public education appropriate for children in institutions for neglected or delinquent children. A State-supported educational program of less than five hours per week would lack sufficient continuity to justify supplementation by Title I services. On the other hand it is unrealistic, given the unique aspects of institutions for neglected or delinquent children, to require substantially more than five hours per week. The five hours per week requirement is a minimum for establishing individual children's eligibility to be counted in average daily attendance. The State agency may, of course, provide more than five hours per week of instruction.

Comment. One commenter recommended that all children of an eligible age residing in an appropriate institution be counted in average daily attendance and be eligible to receive Title I services. This commenter noted that § 116c.5 would not count in average daily attendance children that are forced to drop out of the State-supported educational program for administrative or custodial reasons. Another commenter suggested that children for whom the State makes available an appropriate educational program but who refuse to participate in it be reflected in the computation of average daily attendance.

Response. No change has been made in the regulation. Section 123(b) requires the Commissioner to calculate average daily attendance on the basis of the number of children actually attending the State-supported educational program. Furthermore, the supplemental nature of Title I requires that the children counted and served by Title I actually be receiving the State-supported educational services.

Comment. One commenter recommended that when children in the custody of a State applicant agency receive their education from a local educational agency and at its (the local educational agency's) expense, the State applicant agency should be allowed to receive Title I funds for those children and to make those funds available to the local educational agency.

Response. No change has been made in the regulation. Section 123 of the statute provides that only those State agencies that, under State law, are "directly responsible for providing free public education for children in institutions for neglected or delinquent children or in adult correctional institutions" are entitled to receive grants under this program. The size of these grants is determined in part by "the number of * * * children in average daily attendance * * * at schools * * * operated or supported by (the) State agency." A State agency is not, of course, precluded from receiving a grant because it provides for the children's education through a contract or other arrangement. In this instance, however, the cost of the educational program would still be borne by the State agency.

Comment. One commenter suggested that State agencies which provide a year-round educational program for children in these institutions should be eligible to receive a larger allocation than those State agencies which provide a program of nine months or less. Another commenter suggested that the regulation should provide an incentive to States to provide more State-supported instruction.

Response. A change is made in the regulation so that the method of computing average daily attendance will more nearly reflect the amount of State-supported education provided to the institutionalized children. As the commenters observed, the method of computing average daily attendance provided by the interim regulation did not take account of those State agencies that provide instructional programs throughout the year. Section 116c.5(b) of the interim regulation provided that average daily attendance be determined on the basis of "the number of days the organized program of instruction was in session during the most recently completed school year." As a result of this language, the number of days the organized program of instruction was in session was not reflected in the computation of average daily attendance. For example, two State agencies which have an identical number of institutionalized children and provided them with equivalent educational programs except that one agency conducts its program throughout the year while the other agency conducts its program for only nine months each year, would generate the same average daily attendance.

To reflect more accurately the amount of State-supported education provided, § 116c.5(b) in the final regulation has been rewritten to require that average daily attendance be computed by: "(1) calculating * * * the total number of days of attendance at the organized program of instruction

during the most recently completed school year, and (2) dividing that total by 180." One hundred eighty is an appropriate divisor because that is the approximate number of days of instruction provided by local educational agencies in their regular school programs.

Comment. One commenter suggested that institutions should be required to keep daily records for evey institutionalized child which would reflect that child's attendance at classes as well as the reason for his or her failure to attend.

Response. A change is made in the regulation. To compute average daily attendance accurately, reliable daily attendance records of the children's participation in the State-supported organized program of instruction are necessary. For this reason § 116c.5(b) of the interim regulation provided that average daily attendance was computed "on the basis of daily records * * * for the organized program of instruction." To clarify this requirement, § 116c.5(a)(3) has been rewritten to impose more directly the requirement that daily attendance records of participation in the State-supported educational program be maintained. Section 116c.5(b)(1) also requires that average daily attendance be computed "from [these] daily attendance records." Additional recordkeeping requirements appear unwarranted and unauthorized by the statute.

§ 116c.12 Information Required in Applications

Comment. One commenter recommended that this section include a requirement that individual records be maintained on each child, including date of incarceration, tests, and dates administered, and the educational program devised for that child. Also, the commenter recommended that the regulation require procedures for obtaining and transmitting each child's school records to the next school in which the child enrolls.

Response. A change is made in the regulation. While individual records may be kept on each child as a matter of institutional school administration, the statute does not provide the authority to prescribe the maintenance of a specific system of records. It is agreed that information pertaining to each child's participation in a Title I program should be made available to the next school system that provides the child's education. Section 116c.12(c)(8), therefore, has been added in this regulation to require the transmittal of such information in accordance with subsection (b) of the Family Educational Rights and Privacy Act of 1974 and Part 99 of Title 45 of the Code of Federal Regulations.

Comment. One commenter observed that there was no requirement in the interim regulation that Title I services be provided to those children most in need of Title I services.

Response. Accordingly, § 116c.12(b)(1) has been rewritten to require that project applications contain a description of the procedures employed not only to determine the special educational needs of the eligible children for whom the State agency is providing a free public education, but also to identify those children with the "most serious educational needs." Also, § 116c.13(b)(1) has been rewritten to require the State educational agency to determine, before it approves an application, that the eligible children with the most serious educational needs will participate.

Comment. One commenter stated that objective measures of educational achievement should not be required for the needs assessment required by § 116c.12(b). The commenter observed that institutionalized children often do not respond well to testing situations and recommended that professional opinions, instead of or in addition to, standardized tests be used in assessing educational needs.

Response. Section 116c.12(b)(1) has been revised to require the appropriate use of whatever objective measures of educational achievement are available to the State agency. Neither the interim nor the final regulation, however, precludes the use of other information, when available, such as professional opinions of children's needs and of the appropriateness of existing educational measurements as indicators of those needs.

Other changes

All significant changes in the final regulation have been discussed in response to the comments received relating to the interim regulation. A number of minor changes in wording have been made for clarity. After consideration of the comments received, Part 116c of Title 45 of the Code of Federal Regulations is amended to read as set forth below.

NOTE.—The U.S. Office of Education has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

(Catalog of Federal Domestic Assistance No. 13.431, Educationally Deprived Children in State Administered Institutions Serving Neglected or Delinquent Children.)

Dated: January 20, 1978.

ERNEST L. BOYER,
U.S. Commissioner of Education.

Approved: March 29, 1978.

HALE CHAMPION,
Acting Secretary of Health, Education, and Welfare.

Subpart A—General

Sec.
116c.1 Applicability.
116c.2 Definitions.

Subpart B—Amounts Available for Grants and Payments

116c.3 Grants which a State agency is eligible to receive.
116c.4 Amounts available by grants.
116c.5 Determination of average daily attendance.

Subpart C—Program Requirements

116c.11 Applications.
116c.12 Information required in applications.
116c.13 Criteria for the approval of applications.

AUTHORITY: Sec. 101(a)(2)(E), Pub. L. 93-380, 88 Stat. 494 (20 U.S.C. 241c-3), unless otherwise noted.

Subpart A—General

§ 116c.1 Applicability.

(a) *Scope.* The regulations in this Part govern programs and projects for which funds are provided under section 123 of Title I of the Elementary and Secondary Education Act of 1965, as amended, to State agencies directly responsible for providing free public education for children in institutions for neglected or delinquent children or in adult correctional institutions, to meet the special educational needs of these children.

(b) *Other applicable provisions.* Assistance provided under this Part is subject to all provisions contained in Part 116 (general requirements relating to Title I of the Act) and the applicable provisions of Parts 100, 100b and 100c of this Title relating to fiscal, administrative, property management, and other matters.

(c) The text of the Title I statute is contained in full in the Appendix to Part 116 of this chapter. (41 FR 42907, September 28, 1976) (section 501(b)(1)(A) of Pub. L. 94-482 amends section 125 of the Title I statute by striking out "Except as provided in section 843 of the Education Amendments of 1974, no" and inserting in its place "No," while section 501(o) of Pub. L. 94-482 amends section 125 by striking out "State agency" both places it appears and inserting in its place "State.")

(20 U.S.C. 241c-3.)

§ 116c.2 Definitions.

As used in this Part, "Adult correctional institution" means a facility in which persons are confined as a result of a conviction of a criminal offense, including persons under 21 years of age.

"Child" means a person under 21 years of age.

"Custody" means custody as defined by State law. However, for the pur-

poses of this Part a child who resides in an institution 24 hours a day is deemed to be in the custody of the public agency that assigned him or her to that institution.

"Institution" means either an institution for neglected children, an institution for delinquent children, or adult correctional institution.

"Institution for delinquent children" means a facility which is operated for the care of children who are in the custody of a public agency as a result of a determination under State law that they are either (a) delinquent or (b) in need of treatment or supervision and which has an average length of stay of at least 30 days.

"Institution for neglected children" means a facility (other than a foster home) which is operated for the care of children who are in the custody of a public agency as the result of a determination of neglect under State law, and which has an average length of stay of at least 30 days.

"State agency" means an agency of State government which is directly responsible for the free public education of children in institutions for neglected or delinquent children or in adult correctional institutions. (This education may be provided in schools operated or supported by the State agency or in schools under contract or other arrangement with that agency.) The term does not include an agency whose responsibility for these children is limited to the distribution of State financial assistance to other agencies which State law makes directly responsible for the free public education of these children.

(20 U.S.C. 241c-3.)

Subpart B—Amounts Available for Grants and Payments

§ 116c.3 Grants which a State agency is eligible to receive.

(a) From information supplied by a State agency, the Commissioner shall:

(1) Determine the amount that a State agency (other than the State agency for Puerto Rico) is eligible to receive under this Part for any fiscal year in accordance with the provisions of sections 123, 124, and 125 of Title I of the Act and § 116c.5; and

(2) Determine the amount available for a State agency in Puerto Rico in accordance with sections 123 and 125 of Title I of the Act and § 116c.5.

(b) The Commissioner shall inform the State educational agency of each State of the results of these determinations.

(c) For the purpose of computing an allocation under this Part, the Commissioner may not count a child who is counted in average daily attendance under the provisions of Part 116b (State Operated Programs for Handicapped Children) of this chapter.

(20 U.S.C. 241c-3.)

§ 116c.4 Amounts available for grants.

The State educational agency shall notify each State agency of the amount available to it under § 116c.3 and from that amount shall make funds available to the State agency equal to the cost of programs and projects approved by the State educational agency in accordance with the procedure prescribed by Subpart C of this Part. The amount made available to a State agency under this section shall not exceed the amount the agency is entitled to receive under § 116c.3.

(20 U.S.C. 241c-3, 241g(a).)

§ 116c.5 Determination of average daily attendance.

(a) To be counted in average daily attendance and eligible to receive Title I services, a child must be:

(1) In the custody of the public agency that assigned him or her to an institution;

(2) One for whom a State agency is providing a free public education; and

(3) For at least 5 hours per week in an organized program of instruction for which daily attendance records are kept.

(b) Average daily attendance is computed for each institution by: (1) Calculating from daily attendance records the total number of days of attendance in the organized program of instruction during the most recently completed school year, and (2) dividing that total by 180.

(c) For the purpose of computing average daily attendance;

(1) A child is counted as being in a full day of attendance for each day he or she attends the organized program of instruction for three (3) or more hours; and

(2) A child is counted as being in one-half (½) day of attendance for each day he or she attends the organized program of instruction for at least one (1) hour, but less than three (3) hours.

(d) For the purpose of this section, an organized program of instruction means an educational program (not beyond grade 12) which consists of classroom instruction in basic school subjects such as reading, mathematics, and vocationally oriented subjects, and which is supported by other than Federal funds. Neither the manufacture of goods within the institution nor activities related to institutional maintenance are considered classroom instruction.

(20 U.S.C. 241c-3.)

§ 116c.11 Applications.

A State agency may apply to the State educational agency for a grant or grants of Federal funds under this Part in the amount authorized by §§ 116c.3 and 116c.4 to be used solely to meet the special educational needs of children eligible to be counted in average daly attendance in accordance with § 116c.5.

(20 U.S.C 241c-3, 241e(a), 244(6)(B).)

§ 116c.12 Information required in applications.

The State agency shall include the following information in each application it makes to the State educational agency as authorized by § 116c.11.

(a) *Institutional information.* With respect to each institution at which Title I funded services are to be provided, the application must include:

(1) The name and location;

(2) The classification (i.e., adult correctional, delinquent, or neglected);

(3) The total population at time of application;

(4) The total number of children at the time of application;

(5) The total number of children eligible to be counted in average daily attendance at the time of application;

(6) A description of the nature and scope of the education program currently being conducted for those children counted in paragraph (a)(5) of this section with funds other than those provided under this Part, including types of instruction, number of children being served and number of staff employed in each major area or component, and source of funding.

(b) *Needs assessment.* With respect to the educational needs of all the children for whom the State agency is providing a free public education and who are eligible to be served, the application must include:

(1) A description of the procedures (including objective measures of educational achievement and special diagnostic tests available to the State agency) used to determine their special educational needs and to identify those with the most serious educational needs.

(2) An analysis of the results of those procedures, including the special educational needs identified and the number of eligible children exhibiting those needs;

(3) The additional procedures the State agency intends to employ to determine special educational needs and adapt Title I services to those needs; and

(4) A summary evaluation of the effectiveness of similar past projects funded by section 123 of Title I in accomplishing their objectives.

(c) *Project descriptions.* With respect to the proposed project, the application must include:

(1) A statement of the educational objectives of the proposed project and the related performance criteria;

(2) A description of each service to be provided as a means of accomplishing the project's objectives;

(3) The estimated number of children to be served by age and anticipated grade placement;

(4) A description of the type and number of staff to be employed, and of any inservice training (including the type of training, frequency, and number and type of staff members who will participate in that training);

(5) A budget based on categories of expenditure prescribed by the State educational agency with appropriate detail by service and by institution;

(6) A description of the use of Title I funds for construction or equipment in accordance with 45 CFR 116.32;

(7) A description of the procedures and instruments by which the effectiveness of the program will be evaluated, in accordance with 45 CFR 116.43(a); and

(8) A description of the procedure (in accordance with subsection (b) of the "Family Educational Rights and Privacy Act of 1974" and Part 99 of this Title) for transmitting information about the nature and results of each child's participation in the Title I program to the next school or school system that provides for the child's education.

(20 U.S.C. 241c-3, 241e(a), 244(6)(B).)

§ 116c.13 Criteria for the approval of applications.

A State educational agency shall approve a project for which an application has been made only if it determines that the project is of sufficient size, scope, and quality to give reasonable promise of substantial progress toward meeting the special educational needs of the children to be served. This determination may be made only upon a finding that:

(a) The application contains the information required by § 116c.12 and demonstrates compliance with all other requirements in this Part and the applicable requirements of Parts 100, 100b, 100c, and 116 of this Title;

(b) The project set forth in the application is designed:

(1) To meet the special educational needs of the children to be served, among whom must be the children with the most serious educational needs, as identified in accordance with § 116c.12(b); and

(2) To supplement the existing programs described in accordance with § 116c.12(a)(6).

(c) The evaluation plans comply with 45 CFR 116.43 and are adequate for measuring the attainment of the objectives described in the application in accordance with § 116c.12(c)(1);

(d) No funds other than those authorized by Title I of the Act are available to provide the services proposed in the application; and

(e) The project has not been designed to meet, nor will it have the effect of meeting, the general needs of the institution, a school within the institution, the student body at large, or the needs of a specified grade within that school.

(20 U.S.C. 241c-3, 241e(a), 244(6)(B).)

[FR Doc. 78-8803 Filed 4-3-78; 8:45 am]

federal register

TUESDAY, APRIL 4, 1978
PART V

INTERNATIONAL COMMUNICATION AGENCY

■

TRANSFER OF FUNCTIONS

Implementation of Reorganization Plan No. 2 of 1977

[8230-01]

Title 22—Foreign Relations

CHAPTER V—INTERNATIONAL COMMUNICATION AGENCY

AMENDMENT TO CHAPTER HEADING AND CHAPTER

AGENCY: International Communication Agency.

ACTION: Final rule.

SUMMARY: This rule amends Chapter V to reflect the transfer of functions to the International Communication Agency. The transfer was legislatively mandated by Reorganization Plan No. 2 of 1977 which provides for the transfer of all functions of the United States Information and Educational Exchange Act of 1948, as amended, and the Mutual Educational and Cultural Exchange Act of 1961, as amended, from the United States Information Agency and the Bureau of Educational and Cultural Affairs of the Department of State to the International Communication Agency.

EFFECTIVE DATE: April 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Jane S. Grymes, Management Analysis/Regulation Staff, Associate Directorate for Management, International Communication Agency, Washington, D.C. 20547, 202-632-6813.

SUPPLEMENTARY INFORMATION: Pursuant to the authority of the Director of the International Communication Agency set forth in Reorganization Plan No. 2 of 1977, 22 CFR, Chapter V is amended as follows:

Wherever the following terms appear in Title 22, CFR, Chapter V, they should be changed to read as follows:

Old term	New term
United States Information Agency or U.S. Information Agency.	International Communication Agency.
USIA	ICA.
he;him;his	he/she;him/her;his/her.
Chairman	Chairperson.
Assistant Director, USIA (Personnel and Training).	Director of Personnel Services.
Deputy Assistant Director, USIA (Personnel and Training).	Deputy Director of Personnel Services.
Office of Personnel and Training (IPT).	Office of Personnel Services (MGT/P).
International Communications Media Staff (IMV/C).	Chief Attestation Officer of the United States, International Communication Agency, Washington, D.C. 20547.
Office of Public Information (I/R).	Office of Congressional and Public Liaison (CPL).
Assistant Director, USIA (Public Information).	Director of Congressional and Public Liaison.
IPT	MGT/P.
IGC	GC.
IOS	MGT/S.
IEO	MGT/E.
Finance Division	Financial Operations Division.
IMV/C	PGM/TA.
Domestic Service Recruitment, Office of Personnel and Training.	Employment Branch, Office of Personnel Services.
Office of Administration and Management.	Office of Administrative Services.
Management Division, Office of Administration and Management.	Management Analysis/Regulations Staff, Associate Directorate for Management.

1. Section 501.2(a) is revised to read as follows:

§ 501.2 Eligibility for appointment as FSIO.

(a) Pursuant to Pub. L. 90-494 and section 511 of the Foreign Service Act of 1946, as amended, all Foreign Service information officers shall be appointed be appointed by the President, by and with the advice and consent of the Senate. All appointments shall be made to a class and not to a particular post. No person shall be eligible for appointment as a Foreign Service information officer unless he/she has demonstrated his/her loyalty to the Government of the United States and his/her attachment to the principles of the Constitution, and unless he/she is a citizen of the United States. The religion, race, sex, marital status or political affiliations of a candidate will not be considered in designations, examinations, or certifications.

2. Section 501.4(b) is revised to read as follows:

§ 501.4 Noncompetitive interchange between Civil Service and Foreign Service.

* * * * *

(b) Under this agreement former career personnel of the Agency's Foreign Service (FSCR, FSRU, FSIO, or FSS), and such present personnel desiring to transfer, are eligible, under certain conditions, for noncompetitive career or career-conditional appointment in any Federal agency that desires to appoint them. The President has authorized the Civil Service Commission by Executive Order to waive the requirement for competitive examination and appointment for such Agency career Foreign Service personnel.

3. Section 502.2(b) is revised to read as follows:

§ 502.2 Implementing statute and Executive Order.

* * * * *

(b) Executive Order 11311 "Carrying out Provisions of the Beirut Agreement of 1948 Relating to Audio-visual Materials" provides:

"By virtue of the authority vested in me as President of the United States, including the provisions of the Joint Resolution of October 8, 1966, Public Law 89-634, and section 301 of Title 3 of the United States Code, I hereby order and proclaim that—

"Pursuant to the 'Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific and Cultural Character,' made at Beirut in 1948, the Joint Resolution, and headnote 1 to schedule 8, part 6 of the Tariff Schedules of the United States, the United States Information Agency is hereby designated as the agency to carry out the provisions of the Agreement and related protocol, and to make any determinations and to prescribe any regulations required by headnote 1." This authority has been transferred to the International Communication Agency.

4. Section 502.7(d) is revised to read as follows:

§ 502.7 History and background.

* * * * *

(d) On August 1, 1953, with the creation of the U.S. Information Agency, this attestation program was transferred to USIA where it has continued without interruption. As of January 1, 1967, the Government has issued over 26,000 certificates covering an estimated 175,000 items of visual and auditory materials (a number of the certificates cover a series of items), and over 3,000 different Applicants had submitted materials for export certification. The number of times a certificate is re-used for subsequent shipments of additional copies of the same item is, of course, unknown. The attestation function has now been transferred to the International Communication Agency.

* * * * *

5. Section 502.7(e)(2) is revised to read as follows:

§ 502.7 History and background.

* * * * *

(e) * * * (2) Informally participating. (ICA has reason to believe—judging from actual practice reported—that U.S.A. certificates have a significantly salutary effect upon the waiver of duties and expediting of imports into these countries.)

6. Section 503.4(a) is revised to read as follows:

§ 503.4 Substantative rules of general applicability adopted as authorized by law, and statements of general policy or interpretation of general applicability formulated and adopted by the Agency.

(a) Restriction on domestic availability of Agency media products. Section 501 of the United States Information and Educational Exchange Act of 1948, as amended, and reorganization Plan No. 2 of 1977 authorize ICA to

provide for the preparation, and dissemination abroad, of information about the United States, its people, and its policies. However, any such information (other than "Problems of Communism") may not be disseminated within the United States, its territories, or possessions, but, on request, shall be available in the English language at ICA, at all reasonable times following its release as information abroad, for examination only by representatives of United States press associations, newspapers, magazines, radio systems, and stations, and by research students and scholars, and, on request, shall be available for examination only to Members of Congress.

7. Section 503.5(b) is revised to read as follows:

§ 503.5 Availability of final opinions, order, policies, interpretations, manuals, and instructions.

* * * * *

(b) Current index. The Management Analysis/Regulations Staff, Associate Directorate for Management, 1717 "H" Street NW., Washington, D.C., will maintain and make available on Agency premises for public inspection and copying a current index providing identifying information for the public as to any matter issued, adopted or promulgated after July 4, 1967, and required by this section to be made available or published. The Agency has made copies of such index and will provide copies on request. Single copies will be free. Multiple copies will be provided at a cost of $0.15 per page.

8. Part 504 is revised to read as follows:

PART 504—ORGANIZATION

Sec.
504.1 Introduction.
504.2 Description of central and field organization, established places at which, officers from whom, and methods whereby the public may obtain information.

AUTHORITY: Sec. 4, 63 Stat. 111, as amended, sec. 501, 65 Stat. 290; 22 U.S.C. 2658, 31 U.S.C. 483a, 5 U.S.C. 301, 552, E.O. 10477, as amended, 18 FR 4540, 3 CFR 1949-1953 Comp., page 958, E.O. 10501, 18 FR 7049, 3 CFR 1949-1953 Comp., page 979. Reorganization Plan No. 2 of 1977.

§ 504.1 Introduction.

It is the policy of the International Communication Agency that information about its operations, organization, procedures, and records be freely available to the public in accordance with the provisions of Pub. L. 89-487, the "Public Information Act of 1966," referred to hereinafter as "The Act," which amended the "Public Information" section of the Administrative Protective Act (5 U.S.C. 552).

§ 504.2 Description of central and field organization, established places at which, officers from whom, and methods whereby the public may obtain information.

(a) The International Communication Agency was established as an independent Agency of the Executive Branch of the Government by Reorganization Plan No. 2 of 1977. The Director of the Agency is responsible for reporting to the President and the Secretary of State, as well as advising the National Security Council on international, informational, educational, and cultural matters. The scope of the Director's advice includes assessments of the impact of actual and proposed U.S. foreign policy decisions on public opinion abroad.

(b) Reorganization Plan No. 2 transferred to the new Agency overseas information functions previously lodged in the U.S. Information Agency and the educational and cultural affairs functions of the Department of State. The Reorganization Plan also merged the U.S. Advisory Commission on Information and the U.S. Advisory Commission on International Educational and Cultural Affairs into one, seven-member, U.S. Advisory Commission on International Communication, Cultural and Educational Affairs.

(c) The International Communication Agency has responsibility for the conduct of international informational, educational, and cultural activities, including exchange programs to build bridges of mutual understanding between Americans and the other peoples of the world. The International Communication Agency engages in a wide variety of communication activities—from academic and cultural exchanges to press, radio, and television programs—to accomplish its goals of telling the world about the society and policies of the United States and telling Americans about the world. The International Communication Agency operates field posts in 120 foreign countries.

(d) Agency operations are organized along both functional and geographical lines under a core managerial group composed of the Director, Deputy Director, and four Associate Directors.

(1) The four Associate Directorates are: Broadcasting (VOA), Programs (PGM), Educational and Cultural Affairs (ECA), and Management (MGT).

(i) The Associate Directorate for Broadcasting (the Voice of America) is the global radio network of the International Communication Agency which seeks to promote understanding abroad of the United States, its people, culture, and policies. VOA produces and broadcasts radio programs in English and 36 foreign languages, and operates broadcasting and relay facilities to transmit these programs. It also furnishes technical services and materials to the Agency's overseas posts for the broadcasting of radio programs through local outlets, and for the use of posts.

(ii) The Associate Directorate for Programs (PGM) is comprised of a policy staff and six major offices. The policy staff formulates basic policies and guidance for operating elements of the Agency; reviews plans of Agency elements and overseas posts to assure operations are consistent with established policy objectives and resources are allocated in accordance with priorities. The research and evaluation office combines the functions of research, evaluation, media reaction, and the Agency library. The media offices are responsible for the acquisition and production of a variety of media products for use or adaptation by the overseas posts. These include motion pictures, television programs, videotapes, a daily wireless bulletin to all posts, magazines, pamphlets, reprints, photographs, picture stories, and exhibits in various formats. The media offices also provide facilitative services to foreign TV teams and operate printing plants at three overseas locations. The Office of Foreign Press Centers provides facilitative services to foreign journalists working in New York and Washington. The Office of Program Coordination and Development recruits speakers for overseas posts, and coordinates all media activities of the Agency.

(iii) The Associate Directorate for Educational and Cultural Affairs (ECA) is composed of three major offices. The Office of Cultural Centers and Resources provides policy direction, program support, and professional guidance and materials to overseas libraries and Cultural and Binational Centers. It promotes the distribution of American books in English and in translation; operates a donated books program; and supports English teaching programs abroad. The Office of Institutional Relations develops and implements the exchange of cultural presentations, including art and museum exhibits; facilitates travel to and within the United States of both International and Voluntary Visitors; works with non-Government institutions to encourage and support private exchange programs; and coordinates international information, educational, cultural, and exchange programs conducted by other departments and agencies of the U.S. Government. The Office of Academic Programs is responsible for conducting academic exchanges between the United States and other countries; facilitating the establishment and maintenance of close ties between the American academic community and those abroad; encouraging and supporting American studies at foreign universities and

other institutions of higher learning; and providing staff support to the Board of Foreign Scholarships.

(iv) The Associate Directorate for Management (MGT) is made up of seven major offices. These offices are responsible for administrative and support services, i.e., administration, personnel and training, budget and fiscal services, security, equal employment opportunity, inspections and audits.

(v) The heads of the five geographic areas are the Agency's principal advisers on all programs in or directed to countries in their respective areas. They help to formulate Agency policies and represent the Director in interagency working groups. The Area Directors (African; European; East Asian and Pacific; American Republic; and North African, Near Eastern, and South Asian) are responsible for the coordination and management of information, cultural and educational programs for the countries of their geographic areas. They supply a knowledge of field problems and requirements to the Agency's policy and planning processes. They arrange with media services to provide media products to their areas. They consult with appropriate area and country officers in the Department of State, the Agency for International Development, and with other related agencies, on operational matters of mutual concern.

(vi) The Agency maintains 198 posts abroad in 120 countries. These posts are under the supervision of the U.S. Chiefs of Mission, and with the guidance of the Director and the appropriate area office Director, conduct public information, educational and cultural programs in behalf of the U.S. Government, except for commands of the Department of Defense. Each overseas office is headed by a Public Affairs Officer who is a member of the "country team" under the Chief of the U.S. Diplomatic Mission. A list of overseas offices is maintained by the Management Analysis/Regulations Staff, Room 613, 1717 H Street NW., Washington, D.C. 20547.

(vii) The Office of the General Counsel (GC). The General Counsel and legal staff advise all elements of the Agency on the interpretation of all laws, regulations, and Executive Orders that authorize the Agency's programs or relate to the Agency's activities. The Office assists in the drafting of proposed legislation, Executive Orders, regulations, contracts, leases, and other legal documents. The Office represents the Agency in hearings arising from disputes on contracts, equal employment opportunity, and licensing. The Office secures the necessary rights clearances for the Agency's activities and advises on matters relating to ethical conduct and conflict of interest of Agency employees.

(viii) Office of Congressional and Public Liaison (CPL). This office is responsible for the Agency's domestic relations and contacts with the public, the Congress, and the media. It responds to questions from the American public concerning the purposes and operations of the Agency, and prepares and issues news releases on appropriate activities, policies and personnel actions. This Office also arranges for public appearances by Agency officials; prepares the Agency's annual report to Congress; publishes "ICA WORLD", the Agency's monthly in-house publication; conducts public tours of the Agency exhibit at the Voice of America and of VOA studios; and helps to coordinate affiliations between American and foreign cities.

(ix) The foregoing Agency elements have their principal Washington offices as listed in Appendix I.

9. Appendix I is revised to read as follows:

APPENDIX I

INTERNATIONAL COMMUNICATION AGENCY OFFICE LOCATIONS IN WASHINGTON, D.C., AREA

(1) Agency Elements located at 1750 Pennsylvania Avenue NW., Washington, D.C. 20547:

Office of the Director;
Office of Congressional and Public Liaison;
United States Advisory Commission on International Communication, Cultural, and Educational Affairs;
Office of the General Counsel;
Associate Directorate for Programs—Office of Research and Evaluation; Office of Program Coordination and Development;
Associate Directorate for Management—Office of Equal Employment Opportunity;
Office of the Director for African Affairs;
Office of the Director for European Affairs;
Office of the Director for East Asian and Pacific Affairs;
Office of the Director for American Republic Affairs;
Office of the Director for North African, Near Eastern, and South Asian Affairs.

(2) Other Agency Elements and addresses:

(a) International Communication Agency, 1776 Pennsylvania Avenue NW., Washington, D.C. 20547:

Associate Directorate for Programs—Press and Publications Service;
Associate Directorate for Management—Office of Personnel Services, Office of Comptroller Services;
Associate Directorate for Educational and Cultural Affairs—Office of Institutional Relations, Office of Academic Programs.

(b) International Communication Agency, 1717 H Street NW., Washington, D.C. 20547:

Associate Directorate for Educational and Cultural Affairs—Office of Cultural Centers and Resources;
Associate Directorate for Management—Management Analysis/Regulations Staff.

(c) International Communication Agency, Health, Education, and Welfare Building, 330 Independence Avenue SW., Washington, D.C. 20547: Associate Directorate for Broadcasting (VOA).

(d) International Communication Agency, Patrick Henry Building, 601 D Street NW., Washington, D.C. 20547; Associate Directorate for Programs—Television and Film Service.

(e) International Communication Agency, Foreign Press Center, National Press Building, 529 14th Street NW., Washington, D.C. 20547.

(f) International Communication Agency, 1425 K Street NW., Washington, D.C. 20547:

Associate Directorate for Programs—Exhibits Service;
Associate Directorate for Management—Office of Security.

(g) International Communication Agency, 515 22nd Street NW., Washington, D.C. 20547:

Associate Directorate for Management—Office of Inspections;
Associate Directorate for Management—Office of Audits.

10. Appendix II is revised to read as follows:

APPENDIX II

INTERNATIONAL COMMUNICATION AGENCY OFFICE LOCATIONS OUTSIDE THE WASHINGTON, D.C. AREA

International Communication Agency, Television and Film Service, New York Office, 1657 Broadway, New York, N.Y. 10019.
International Communication Agency, Foreign Press Center, 866 Second Avenue, New York, N.Y. 10017.
International Communication Agency, Associate Directorate for Educational and Cultural Affairs-New York Services Staff, 252 Seventh Avenue, New York, N.Y. 10001.
International Communication Agency, Delano Relay Station, Route 1, Box 1350, Delano, Calif. 93215.
International Communication Agency, Edward R. Murrow Transmitting Station, P.O. Box 1826, Greenville, N.C. 27834.
International Communication Agency, Southeast Correspondent Staff, Room 518, Federal Office Building, 51 S.W. First Avenue, Miami, Fla. 33130.
International Communication Agency, Midwest Correspondent Staff, Room 1459, Federal Building, 219 South Dearborn Street, Chicago, Ill. 60604.
International Communication Agency, Overseas Support Division, New York Services Branch, 830 Third Avenue, Brooklyn N.Y. 11232.
International Communication Agency, Senior Adviser for Public Affairs, U.S. Mission to the United Nations, 799 United Nations Plaza, New York, N.Y. 10017
International Communication Agency, Associate Directorate for Broadcasting—New York Program Center, 250 West 57th Street, New York, N.Y. 10019.
International Communication Agency, Bethany Relay Station, P.O. Box 227, Mason, Ohio 45040.
International Communication Agency, Dixon Relay Station, Route 2, Box 739, Dixon, Calif. 95620.
International Communication Agency, Marathon Relay Station, P.O. Box 726, Marathon, Fla. 33050.
International Communication Agency, West Coast Correspondent Staff, Room 12220, Federal Building, 11000 Wilshire Boulevard, Los Angeles, Calif. 90024.
International Communication Agency, Associate Directorate for Educational and Cultural Affairs—

RECEPTION CENTERS

(a) Honolulu—6106 Federal Office Bldg., 300 Ala Moana Blvd., Honolulu, Hawaii 96814.
(b) Miami—Room 1304, Federal Office Bldg., 51 S.W. First Avenue, Miami, Fla. 33130.
(c) New Orleans—Suite 240, International Trade Mart, 2 Canal Street, New Orleans, La. 70130.
(d) New York—1601 Fisk Bldg., 250 West 57th Street, New York, N.Y. 10019.
(e) San Francisco—Suite 112, 50 United Nations Plaza, San Francisco, Calif. 94102.

11. Section 505.11(a) is revised as follows:

§ 505.11 Fees.

(a) The Agency will charge a fee of $0.15 per page for copies of documents which are identified by an individual and reproduced at the individual's request for retention. There will be no charge for requests involving costs of $1.00 or less.

* * * * *

12. Section 511.2 is revised to read as follows:

§ 511.2 Scope of regulations.

The regulations in this part shall apply only to claims asserted under the Federal Tort Claims Act, as amended, or as incorporated by reference in any appropriation Act or other statutes, for money damages against the United States for injury, loss of property, personal injury, or death caused by the negligent or wrongful act or omission of any employee of the Agency while acting within the scope of his/her office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

It is the general policy of the International Communication Agency to allow time for interested parties to take part in the rulemaking process.

However, these amendments are administrative in nature and were mandated by law. Therefore, the rulemaking process, involving comment and public procedure, is waived, and this amendment will become effective April 1, 1978.

Issued at Washington, D.C.

JOHN E. REINHARDT,
Director, International Communication Agency.

[FR Doc. 78-9104 Filed 4-3-78; 12:40 pm]

Advance Orders are now being Accepted for delivery in about 6 weeks

CODE OF FEDERAL REGULATIONS

(Revised as of October 1, 1977)

Quantity	Volume	Price	Amount
_____	Title 43—Public Lands: Interior (Parts 1 to 999)	$4.00	$_____

[A Cumulative checklist of CFR issuances for 1978 appears in the first issue of the Federal Register each month under Title 1. In addition, a checklist of current CFR volumes, comprising a complete CFR set, appears each month in the LSA (List of CFR Sections Affected)]

PLEASE DO NOT DETACH

MAIL ORDER FORM To:

Superintendent of Documents, Government Printing Office, Washington, D.C. 20402

Enclosed find $..... (check or money order) or charge to my Deposit Account No. .....

Please send me ..... copies of:

PLEASE FILL IN MAILING LABEL BELOW

Name ----------

Street address ----------

City and State ---------- ZIP Code ----------

FOR USE OF SUPT. DOCS.

----Enclosed----------

To be mailed

----later----------

----Subscription----------

Refund----------

Postage----------

Foreign Handling----

FOR PROMPT SHIPMENT, PLEASE **PRINT OR TYPE** ADDRESS ON LABEL BELOW, INCLUDING **YOUR ZIP CODE**

SUPERINTENDENT OF DOCUMENTS
U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON, D.C. 20402

OFFICIAL BUSINESS

POSTAGE AND FEES PAID
U.S. GOVERNMENT PRINTING OFFICE
375
SPECIAL FOURTH-CLASS RATE BOOK

Name ----------

Street address ----------

City and State ---------- ZIP Code ----------